15-141

RECORD, CASE No. 13,457.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 304.

CHARLOTTE COHN, APPELLANT,

vs.

WILLIAM H. GAINES AND MARIA GAINES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED JANUARY 2, 1889.

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1 Be it remembered that on the 23rd day of May, 1884, came into the office of the clerk of the circuit court of the United States for the eastern district of Arkansas William H. Gaines and wife, by M. W. Benjamin and R. G. Davies, Esqs., their solicitors, and filed therein, on the chancery side of said court, their bill of complaint against Charlotte Cohn *et al.;* which bill is as follows:

United States Circuit Court, Eastern District of Arkansas, October Term Thereof, 1884.

WILLIAM H. GAINES and MARIA GAINES, His Wife, Plaintiffs,
vs.
CHARLOTTE COHN and HENRY COHN, Her Husband, Defendants.

William H. Gaines and Maria Gaines, his wife, bring this their suit against Charlotte Cohn and Henry Cohn, her husband, and for cause of action allege that in the year 1851, in pursuance of the instruction of the Secretary of the Interior, plaintiff Maria Gaines, Albert Belding, Henry Belding, and George Belding, heirs and legal representatives of Ludovicus Belding, entered, under the pre-emption laws of the United States, the southwest quarter of section thirty-three, in township two (2) south, range nineteen (19) west, for which they paid the United States Government two hundred dollars, which was advanced and paid by plaintiff Wm. H. Gaines, and which money the United States still retains. At the time of said entry a small portion of said land was occupied by Mrs. Lydia Belding, widow of Ludovicus Belding, and the portion of said land
2 for which this suit is brought was occupied by —— ——, and in — Wm. H. Gaines, Maria Gaines, Albert Belding, Henry Belding, and George Belding, under the supervision and control of Wm. H. Gaines, brought suit in the Hot Springs circuit court against —— —— and recovered judgment for the possession of said land, which judgment was afterwards affirmed by the supreme court of the State of Arkansas and by the Supreme Court of the United States, and on the — day of ——, 1856, Wm. H. Gaines was, by the sheriff of Hot Springs county, put in possession of said property by virtue of a writ of possession issued upon the judgment of said Hot Springs circuit court in obedience to the mandates of said supreme courts, both of the State and of the United States, and said plaintiffs, Wm. H. Gaines and Maria Gaines, his wife, remained in peac-able and quiet possession of said property until the 1st day of June, 1876, when they were dispossessed of said property by a receiver appointed by the Court of Claims of the United States under an act of Congress entitled "An act in relation to the Hot Springs reservation, in Arkansas," approved June 11th, 1870.

Plaintiff entered into possession by virtue of said entry and by virtue of the decisions of said State and United States supreme courts and the writs of possession issued in pursuance of said judgments, and continued in possession for a period of about twenty years, until the Supreme Court of the United States, in a suit to determine to whom the patent should issue, decided that said lands were not sub-

ject to pre-emption or entry, and that no claimant was entitled to a patent, but the same was still the property of the United States, which decision was rendered April 24th, 1876.

Plaintiffs during said twenty years paid taxes on said property and fenced and built houses on the same and otherwise improved the same.

On the 20th day of May, 1875, and on the 1st day of March, 1875, plaintiff Wm. H. Gaines, being authorized by said heirs, leased a lot of ground, which has since been laid off into lots and blocks by the Hot Springs commission in pursuance of an act of Con-
3 gress and is now known as lot seven (7) and block one hundred and thirty (130), to Henry Cohn, which lease was for the term of one year, to be renewed at the election of the lessee from year to year until the title to the Hot Springs quarter section of land was settled, for an annual rent of five hundred dollars, $500, payable in monthly installments of —.

Said lease also provided that all buildings and improvements erected on said lot by the lessee might be removed therefrom during the continuance of the lease or within thirty days thereafter, but that no buildings or improvements erected could be removed while said rent or any part thereof remained due and unpaid. It also provided that the lessor should have a lien on all buildings and improvements to secure the rent, a copy of which is hereto attached in Exhibit "A" and made part hereof.

Said lessee took possession of said land under and by virtue of lease only, and in no other way whatever, and he, —— ——, and — assigns occupied the same under said lease until the 1st day of June, 1876, at which time the United States Government dispossessed all parties to this suit and took possession of said land and improvements and rented the same through A. O. Morgan, a receiver appointed by the U. S. Court of Claims for that purpose, and continued in the legal possession thereof until the same was entered in the U. S. Land Office, to wit, Oct. 22nd, 1880.

That on the 24th day of April, 1876, said lessee and his assigns owed the lessor for rent the sum of two hundred and sixteen dollars and forty-six cents ($216.46).

Said lessees and *their* assigns failed to remove said buildings and improvements erected by them at any time during or within thirty days after the expiration of the lease, and by virtue of the provisions of the lease said buildings and improvements erected by said lessee and *their* assigns became the building- and improvements of Wm. H. Gaines.

That on the — day of ——, 187–, said lessee, Henry Cohn, sold and transferred to Charlotte Cohn, his wife, all his right,
4 title, and claim to said premises, she well knowing before said transfer all the terms and conditions of said lease, which transfer was made without the knowledge or consent of the plaintiff.

Plaintiffs, by arrangement with George, Henry, and Albert Belding, having become the owner of said claim, aver that in less than six calendar months after the first sitting of the Hot Springs Commission, under the act of Congress of the United States entitled "An

act in relation to the Hot Springs reservation, in the State of Arkansas," approved March 3rd, 1877, they filed their claim before said commission to purchase said lot, and that Charlotte Cohn filed a like claim, and that upon the hearing of said claims they were consolidated by said commission for the purpose of hearing the testimony; and said petitions filed and the testimony taken before said commission clearly show that Charlotte Cohn had acquired her possession in no other way but by said lease made by plaintiff Wm. H. Gaines to said Henry Cohn, as will more fully appear from a complete copy of the petition, testimony, and record entries in said claims filed herewith and marked Exhibit "A" and made part hereof. Notwithstanding that said petition and testimony showed that defendant Charlotte Cohn acquired possession only by virtue of said lease, still said commission misconstrued the law applicable to that state of facts and awarded the right to purchase said lot to defendant Charlotte Cohn, and since said award said defendant has purchased said lot from the United States and received a patent therefor, and on account of said misconstruction of the law as applied to the facts before said commission the right to purchase said lot, which in law, equity, and good conscience should have been awarded to plaintiffs, was by said misconstruction of law illegally and wrongfully awarded to defendant Charlotte Cohn by said Hot Springs commission.

Plaintiffs aver that defendants have never had any other right or title to said lot or to the possession thereof than that which they derived from said lease and under covenants to restore possession to plaintiff Wm. H. Gaines; that said defendants should be held to hold said lot as trustees for the ure and benefit of plaintiffs.

Plaintiffs offer to pay any sum of money that may be found due to the defendants or either of them by reason of any money paid to the United States for the purchase of said lot, and to do all other acts which may be found to be just and equitable.

Plaintiffs aver that the property herein sued for is worth more than five hundred dollars, and that this cause of action arises wholly under the laws of the United States.

Plaintiffs ask that defendants be required to answer, but not under oath; and they pray that an account may be taken of the state of accounts between themselves or either of them and said defendants severally; that they may be allowed reasonable rents for the occupancy of the said premises; that defendants may be decreed to hold said lot as trustees for the plaintiffs and to convey the same to the plaintiffs, and that they may have such other relief as may be equitable.

M. W. BENJAMIN,
R. G. DAVIES, *Solicitors.*

Good for costs.
M. W. BENJAMIN.

(Endorsed:) Filed and writ issued May 23rd, 1884. Ralph L. Goodrich, clerk, by W. P. Feild, D. C.

UNITED STATES OF AMERICA,
Eastern District of Arkansas.

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 14th day of April, anno Domini one
6 thousand eight hundred and eighty-four, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On July 7th, 1884:

639. Come the defendants, Charlotte Cohn and Henry Cohn, by Geo. W. Murphy, Esq., their solicitor, and enter their appearance herein.

And on September 1st, 1884, as follows:

639. Comes the defendant Charlotte Cohn, by G. W. Murphy, Esq., her solicitor, and on his motion leave is granted said defendant sixty days in which to file her answer.

UNITED STATES OF AMERICA,
Eastern District of Arkansas.

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 27th day of October, anno Domini one thousand eight hundred and eighty-four, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On October 29th, 1884:

639. Come the defendants, by G. W. Murphy, Esq., their solicitor, and on his motion it is ordered that he have leave until the 1st of December next to file answer.

7 On December 1st, 1884, the following proceedings were had:

639. The plaintiffs, by M. W. Benjamin, Esq., their solicitor, ask leave to amend their complaint by interlineation, which is granted, and thereupon said amendments are made.

On December 6th, 1884, the following proceedings were had:

639. Come the defendants, Henry Cohn and Charlotte Cohn, by G. W. Murphy, Esq., their solicitor, and file herein their answer; which answer is as follows:

In the United States Circuit Court, Eastern District of Arkansas.

WILLIAM H. GAINES and MARIA GAINES, Plaintiffs,
vs.
R. H. COHEN, HENRY COHN, and CHARLOTTE COHN, Defendants.

The answer of Henry Cohn and his wife, Charlotte Cohn, two of the defendants, to the bill of complaint of the plaintiffs, William H. Gaines and Maria Gaines.

These defendants, saving and reserving all manner — exception and advantage of the many errors and insufficiencies of the bill of complaint, for answer thereto and to such parts thereof as are material, say:

That the allegations thereof to the effect that plaintiffs Maria and Albert Belding, Henry Belding, and George Belding, heirs of Ludovicus Belding, entered in the year 1851, under the pre-emption law of the United States, the southwest quarter of section
8 thirty-three, township two south, range nineteen west; that they paid the United States $200 for it; that the plaintiff Wm. H. was put in the possession of it by the sheriff of Hot Springs county in 1856; that plaintiffs and said Albert, Henry, and George recovered judgment for it; that plaintiffs entered into the possession of it; that they continued in possession of it; that they paid taxes on it; that they built houses on it; that they fenced it; that they improved it; that the defendant R. H. Cohn and her assigns failed to remove their improvements from the land for which this suit is brought; that they became the improvements and buildings of plaintiff William H.; that they owed said plaintiff, on the 24th of April, 1876, as rent for said land, $216.46; that the transfer of the lease by the defendant R. H. to defendant Charlotte was without the consent of said plaintiff; that the testimony taken before the Hot Springs commissioners showed that defendant Charlotte derived her possession through said plaintiff; that it showed that the right to purchase said land from the United States was in plaintiff; that said right should have been awarded to them; that the award thereof to defendant Charlotte was wrongful; that said commissioners misconstrued the law; that defendants never had any right to said land except what they derived through said plaintiffs, are false.

As to the alleged lease, these defendants say that on the 20th day of May, 1875, the defendant R. H. Cohn accepted from the plaintiff Wm. H. a formal lease of the land now known and distinguished as lot No. 7, in block 130, for the term of one year from the 1st day of June, 1875, the date of the beginning of the term; that it contained a covenant of renewal from year to year at the election of said defendant, and a provision and covenant to the effect that all improvements erected by her should be and remain her property, and that she should have the right to remove them, and might exercise it any time within thirty days next after the expiration of the term; that it contained no clause or covenant of forfeiture of said right of removal for the non-payment of the rent or any other cause, but gave,

in terms, a lien on the improvements for the rent; that on
9 the 14th day of August, 1875, said defendant R. H., with *with* the written consent of plaintiff William H., sold and transferred all her right and interest in said term under said lease and her rights thereunder and her improvements on said lot to defendant Charlotte, and delivered the *possession* thereof to her; that she, defendant, Charlotte, has, in fact, from that time to the present been in the possession of said lot, though, on the 1rt of June, 1876, she was compelled to attorn to the United States and to rent said lot and her improvements on it from the receiver, Morgan, appointed by the Court of Claims of the United States, which she did for the purpose of saving her improvements; that she held said lot and improvements under said receiver from said date, June 1st, 1876, till March 3rd, 1877, when the law under which he was appointed was repealed and he relieved from his duties and the further collection of rent for said lot suspended; that at the time of making said lease plaintiff Wm. H. had no improvements on said lot and no possession of it, and that the same is true of the said Maria, Albert, Henry, and George, and that if either he or they had ever had any improvements on it he had sold them or removed them; that there were at the time of said transfer no improvements on said lot except those which the defendant R. H. had made thereon and then owned; that the defendant Charlotte, between the date of said transfer and the 1st of January, 1876, erected upon said lot buildings and improvements to the value of $4,000.00, which she then owned, which by the provisions of said lease were hers, and which she had the right to remove as aforesaid; that in January, 1876, becoming uneasy about her improvements in consequence of learning that plaintiffs' title was defective and had been so decided by the Court of Claims, she told the plaintiff Wm. H., through her husband, that she feared she would loose her improvements, and asked him to give her some assurance that she would be permitted to retain said improvements and remove them, which he refused to do, saying that she could afford to loose the improvements better than he could to loose the whole land; that these defendants, after this, refused to pay him any more rent for said lot, except on the
10 condition of his giving them some assurance that they would be protected; that he, on the 12th of February, 1876, instituted against these defendants an action of unlawful detainer for said lot, describing it by metes and bounds, by filing in the circuit court of Garland county, wherein said lot is situated, a complaint, a copy of which is annexed to and made part of this answer as Exhibit "A"; that said action pended in said court until the 2nd day of August, 1880, when the judgment, by consent hereinafter set forth, was rendered and entered therein. These defendants further say as to said lease that at the time of making and acceptance thereof the title, both legal and equitable, to said lot was in the United States, and that neither said plaintiff nor the alleged heirs of said Ludovicus Belding were in possession of it, and that said lease was a void and illegal contract, having for its object the violation of the right of the United States by trespassing on said lot;

that said plaintiff violated his covenant touching said improvements and said right of removing them; that when the Supreme Court of the United States, on the 24th day of April, 1876, determined said quarter section to be the property of the United States he ignored said covenant and refused to make any effort to keep or protect the same or to protect this defendant Charlotte, but, on the contrary, disclaimed all interest in said lot and surrendered it to the said receiver and urged him to take possession of it and dispossess these defendants, which he did by taking possession and compelling them to attorn to the United States and rent said lot and improvements from him; that at the date of said lease and transfer the defendants were all ignorant of the defect of the title of plaintiffs and if said alleged heirs, and that they entered into said transactions and made said improvements on the faith of said covenants and in the belief that said plaintiff could and would protect them. These defendants admit the execution to plaintiff by the said Albert, Henry, and George of the deeds as alleged in the complaint.

These defendants say, as to the alleged entry and judgcent,
11 that said quarter section was not subject to entry, and that plaintiffs and said heirs well knew when they made the application to enter it that they had not a shadow of right to enter it; that the only possession they or their alleged ancestor had ever had on said quarter section was as tenant of John Perciful and those claiming under him; that they nevertheless, by persistent efforts and by promising that they would never demand a patent, procured a fraudulent and void writing in the form of a certificate of entry of said quarter; that they then sued, in the circuit court of Hot Springs county, John C. Hale and others, who were occupying parts of said quarter, but not said lot, and recovered the alleged judgment; that they were afterwards, in a suit instituted by said Hale in the same court, perpetually enjoined from executing said judgment, because of the fraudulent character of said certificate, by a decree which was affirmed by the supreme court of Arkansas and the Supreme Court of the United States. These defendants say that it is true that plaintiffs and defendants Charlotte filed before the Hot Springs commissioners, within six calendar months from their first sitting, conflicting claims of right to purchase said lot from the United States, and that they were by said commissioners consolidated for the purpose of hearing the evidence, as alleged in the complaint, and that they awarded upon the hearing said right to her. These defendants also say that the said claim of plaintiffs was based solely on said void entry, judgment, and lease and on a false claim and idea that said improvements had become forfeited to plaintiff W. H.; that defendant Charlotte's said claim was based on her ownership and occupancy of the improvements on said lot, which improvements it described, stating the means by which she became the owner of them; that the evidence introduced upon said hearing showed conclusively that she was then the owner and occupant of all of the said improvements, and that she acquired them and her claim prior to the 24th of April, 1876, and that said commissioners accordingly sustained her claim and awarded said

right to her, as they should have done. These defendants further say that on the 2nd day of August, 1880, when the
12 said circuit court of Garland county was in session and long after said award was rendered, it was agreed between them and plaintiffs that a judgment should be rendered in said action of unlawful detainer in favor of said plaintiff Wm. H. for $157.84, the rent for said lot, then unpaid, to June the 1st, 1876, and that judgment should be rendered therein in favor of them, defendants, for said lot, and that all matters growing out of said lease and pertaining in any way to said lot should be thereby settled and ended, and that plaintiffs should have and make no further claim to said lot or against defendants or either of them on account of it; that a judgment was on said day in said action by said court accordingly, by consent, rendered in said plaintiffs' favor for said sum and in favor of defendants for said lot, adjudging that they should have and keep the possession of it; that these defendants paid said judgment before this suit was instituted; that plaintiffs expressed no dissatisfaction with said judgment or award until they brought this suit; that they did not ask her to convey the lot to them; that they have, and especially the plaintiff Wm. H. has, ever since the rendition of said judgment spoken of the said lot as defendant Charlotte's property, and asserted and sworn that it was hers. These defendants annex to this answer a certified copy of said judgment as Exhibit "B," with an entry of satisfaction upon the margin thereof, which entry is true. These defendants further say that from the 1st day of June, 1876, to the present time they have held adversely to plaintiffs and under claim of right in said Charlotte open and notorious possession of said lot; that from said 1st day of June, 1876, to the date of the institution of this suit a period of more than seven years elapsed; that from said 3rd day of March, 1877, as well as from the date of the first sitting of said commission, which was in April, 1877, to the institution of this suit more than seven years elapsed; all of which facts as to lapse of time they claim the same
13 benefit as if they had set them forth under a formal plea of the statute of limitations. These defendants further say that said award and all other awards of said commissioners were, on the 16th of August, 1880, by an act of Congress entitled An act for the establishment of titles in Hot Springs, and for other purposes, confirmed. These defendants further say that since the rendition of said judgment by said circuit court the said defendant Charlotte has, with the knowledge of plaintiffs and without objection from them, bought said lot from the United States and paid for it and made and erected on it improvements worth $5,000 under claim of right, for which they pray that she may, if required to convey said lot to plaintiffs, have compensation decreed her.

These defendants say that if there are in the bill of complaint any material matters not herein expressly denied or admitted they are untrue; and these defendants, having fully answered the bill of complaint, pray that it be dismissed, and that they be discharged with their costs.

G. W. MURPHY,
Counsel for Defendants, Henry Cohn and Charlotte Cohn.

EXHIBIT "A."

In the Garland Circuit Court, to the May Term, 1876.

WM. H. GAINES, Plaintiff,
vs.
HENRY COHN and CHARLOTTE COHN, Defendants.

Complaint at Law.

William H. Gaines, the plaintiff in this suit, complains of Henry Cohn and Charlotte, his wife, defendants in this suit, of a plea whereof they unlawfully detain the land and premises of the plaintiff; for that the said plaintiff heretofore, to wit, on the 20th day of May, A. D. 1875, was in the peaceable possession of the following land and premises, to wit: All that certain lot or parcel of land beginning at the south side of the alley nine feet and four inches south of the Carsen building, on the east side of the street, in the town of Hot Springs, running thence south along said street fifty feet to the "Gillis house;" thence east at right angles with the street eighty-five feet to the center of the Hot Springs creek; thence north parallel with the first line fifty feet; thence west parallel with the second line eighty-five feet to the place of beginning, embracing a lot fronting fifty feet on the street and running back eighty-five feet to the center of said Hot Springs creek, and embracing the ground occupied by the old "Bush house," in the town of Hot Springs, county of Garland, State of Arkansas; and the plaintiffs, so being possessed of said lot or parcel of land and premises on the day and year aforesaid, leased the same by a written lease, a copy of which is attached hereto, marked "A," and made a part hereof, to one R. H. Cohn for the period of twelve months, with the privilege of renewing from year to year, at the election of the lessee, R. H. Cohn, until the title to the Hot Springs land is settled, from the 1st day of June of said year of A. D. 1875, at the rate of five hundred dollars per annum, to be paid in monthly installments; and plaintiffs say that the said R. H. Cohn, on the 14th day of August, A. D. 1875 (with the knowledge and consent of said plaintiff), made a written agreement (on said lease attached hereto, marked A) of his unexpired term on said lease to Charlotte Cohn, wife of Henry Cohn, the defendants herein; and plaintiff says said defendants, Henry Cohn and Charlotte, his wife, entered upon, occupied, took, and held possession of said lot or parcel of land under said written lease and paid the plaintiff a portion of the rent money as it became due and according to the terms of said written lease.

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And the plaintiff says afterwards, to wit, on or about the — day of ——, A. D. 187–, said defendants, Henry Cohn — Charlotte Cohn, his wife, refused to pay him any more rent on account of said land and set him at defiance, and that said defendants removed the relationship of landlord and tenant and does now remove the same, and have continued to hold and do now hold said lot or parcel of land adversely to said plaintiff; and plaintiff

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says that the term and estate of said defendants in said lot or parcel of land has expired, and that they have forfeited all their right and interest to said lot or parcel of land and premises under said lease by reason of this bad, faithless conduct.

And plaintiff says that he is lawfully entitled to the possession of said lot or parcel of land, and that said defendants, Henry Cohn and Charlotte, his wife, unlawfully detain the same after lawful demand in writing therefor made and served on said defendants, to wit, on the 8th of February, 1876. Wherefore he prays judgment for the restitution of the lot or parcel of land and premises aforesaid, for his costs in this behalf expended, and one hundred and fifty dollars damages.

RECTOR & DAVIAS,
Attorneys for Plaintiffs.

STATE OF ARKANSAS, }
County of Garland. }

Wm. H. Gaines says he believes the statements in the foregoing complaint are correct.

WM. H. GAINES.

Sworn to and subscribed before me this 12th day of February, A. D. 1876.

A. W. B. REED, *Clerk.*

STATE OF ARKANSAS, }
County of Garland. }

Wm. H. Gaines, the plaintiff in the above case, states on oath that he is lawfully entitled to the possession of the land and premises mentioned in the above complaint, to wit: Beginning at the south side of the alley nine feet and four inches south of the Caver building, on the east side of the street, in the town of Hot Springs, running thence south along the street fifty feet to the Gillis house; thence east at right angles with the street eighty-five feet to the center of the Hot Springs creek; thence north parallel with
16 the first line fifty feet; thence west parallel with the second line eighty-five feet to the place of beginning, embracing a lot fronting fifty feet on the street and running back eighty-five feet to the center of the said Hot Springs creek and embracing the ground occupied by the old "Bush house," in the town of Hot Springs, Garland county, State of Arkansas, and that said Henry Cohn and Charlotte, his — [* * *?].

EXHIBIT B.

HOT SPRINGS, ARKANSAS, MONDAY, *August 2nd*, 1880.

Be it remembered that at a regular term of the circuit court of Garland county, Arkansas, which was begun and holden at the city hall, in the city of Hot Springs, the temporary court-house for Garland county, Arkansas, on Monday, the 2nd day of August, A. D. 1880, said day being the time prescribed by law for holding a term of said court, there was present and presiding (by virtue of an agree-

ment between himself and the Hon. Jabez M. Smith, judge of the 7th judicial circuit) Hon. J. N. Cypert, judge of the 1st judicial district of the State of Arkansas, when the following proceedings were had, to wit:

Ordered that court be proclaimed open pursuant to law; which was accordingly done by J. M. Nichols, sheriff of Garland county.

And afterwards, on Friday, August 13th, 1880, the same being a subsequent adjourned day of said term of said court, among other, the following proceedings were had, to wit:

—— ——
vs. } 189.
HENRY COHN and CHARLOTTE COHN.

This day comes the plaintiff, W. H. Gaines, by attorney, R. G. Davies, Esq.; comes also the defendants, Charlotte Cohn and R. H. Cohn, and, by consent, the plaintiff waives all claim to the
17 possession of the premises in controversy, and the defendants agree to confess judgment for the amount of rent appearing to be due for the lease, a copy of which is filed with plaintiff's complaint, from the time notice to quit was served upon defendants until the 1st day of June, A. D. 1876, to wit, the sum of $151.84, one hundred and fifty-one dollars and eighty-four cents; and, the court being sufficiently advised in the matter and knowing what judgment to render herein, it is considered and adjudged that the defendants, Charlotte and Henry Cohn, have and keep the possession of said premises, and that the plaintiff, Wm. H. Gaines, have and recover of and from the defendants, Charlotte Cohn and Henry Cohn, the sum of one hundred and fifty-one $\frac{84}{100}$ dollars, with all his costs of suit herein expended, and that he have execution therefor.

HOT SPRINGS, ARK., 1883.

I hereby acknowledge satisfaction in full of the within judgment, except costs of suit.

W. H. GAINES,
By R. G. DAVIES.

May 28th, 1883, costs fully satisfied by H. & C. Cohn.

STATE OF ARKANSAS, }
County of Garland. }

I, Ziba Beldin, clerk of the circuit court, do hereby certify that the foregoing is a true copy of a judgment rendered in the case of W. H. Gaines *vs.* Charlotte and Henry Cohn as the same appears of record in my office, on page 434 and 435 of Record of Circuit Court, Book B.

In witness whereof I have hereunto set my hand and seal on this 30th day of August, 1884.

—— ——.

(Endorsed:) Filed December 6th, 1884. Ralph L. Goodrich, clerk.

And on January 5th, 1885, the following proceedings were had, to wit:

639. Come the complainants, by M. W. Benjamin and R. G. Davies, Esqs., their solicitors, and file herein their replication
18 to defendants' answer; which replication is as follows:

United States Circuit Court, Eastern District of Arkansas.

WM. H. GAINES and WIFE
vs.
CHARLOTTE COHN *et al.*

The said plaintiffs say their bill is true, and that defendants' answer, as set forth, is not true; and this they are ready to prove.

M. W. BENJAMIN,
R. G. DAVIES, *Solicitors.*

(Endorsed:) Filed January 5th, 188-. Ralph L. Goodrich, clerk.

And on February 2nd, 1885, the following:

639. And the said complainants having obtained leave of the court to file an amended complaint herein, leave is hereby granted the said defendants within thirty days from and after the date of this order to file an amended answer.

UNITED STATES OF AMERICA,
Eastern District of Arkansas.

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 12th day of April, anno Domini one thousand eight hundred and eighty-six, at the United States
19 court-room, in the city of Little Rock, Arkansas, the Hon. David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On April 20th, 1886:

639. Come the complainants, by Benjamin and Davies, their solicitors, and come the defendants, by —— ——, their solicitors, and this cause is submitted to the court upon the pleadings and evidence, and by agreement of parties it is ordered that the complainants have fifteen days and the defendants thirty days thereafter in which to file abstracts, and thereupon the complainants to have ten days and the defendants ten days thereafter in which to file briefs, and that five days thereafter be given for reply. It is further ordered that each party serve upon the opposing party copies of abstracts and briefs.

UNITED STATES OF AMERICA,
Eastern District of Arkansas.

Be it remembered that at a circuit court of the United States of

America in and for the eastern district of Arkansas begun and holden on Monday, the 25th day of October, anno Domini one thousand eight hundred and eighty-six, at the United States court-room, in the city of Little Rock, Arkansas, the Hon. David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On November 11th, 1886:

639. Come the complainants, by M. W. Benjamin, Esq., their solicitor, and come the defendants, by G. W. Murphy, Esq., their solicitor, and file herein their agreement as to certified copies
20 of deeds and evidence; which agreement is as follows:

In U. S. Circuit Court, Eastern District of Arkansas.

WM. H. GAINES and MARIA GAINES
vs.
CHARLOTTE COHN *et al.* } 639.

It is hereby agreed that on the hearing of the above causes all certified copies of deeds of conveyance of any of the lots embraced in any of said causes may be read in evidence by any or either of the parties in lieu of the originals and without further proof; that all copies of leases filed before the Hot Springs commissioners and all copies transcribed in the evidence certified by the Commissioner of the General Land Office of the United States and the evidence as certified may be read in evidence on the hearing of aoy of the above causes, as far as applicable and relevant, by any of the parties concerned, whether filed in the several cases or not, and that said certified copies contain all the evidence taken before the commission in regard to property sued for, except B. W. Goode's claim that his evidence is not correctly reported; otherwise all right.

M. W. BENJAMIN,
Atorney for Plaintiff.
G. W. MURPHY,
Attorney for Defendants R. E. Allen, D. C. Rugg, Thos. Howard, Thos. Toney, J. Fenton, Chas. N. Rix, B. W. Goode, Charlotte Cohn, John Adamson.

(Endorsed:) Filed November 11th, 1886. Ralph L. Goodrich, clerk.

On the same day as follows:

639. Come the complainants, by M. W. Benjamin, Esq.,
21 their solicitor, and come the defendants, by G. W. Murphy, Esq., their solicitor, and file herein their agreement to take depositions; which agreement is as follows:

U. S. Circuit Court, Eastern District of Arkansas.

WILLIAM H. GAINES and MARIA GAINES
vs.
CHARLOTTE COHN *et al.* } 639.

It is agreed that depositions in the above cases or any of them may be taken on behalf of the plaintiffs or of any of the defendants who have answered, whenever both sides are represented by attorney present or on reasonable notice, without rule or commission, at any time before the trial, and that they may be read on the hearing, subject to exceptions as to relevancy and competency, and that at the hearing such parts of the testimony taken before the Hot Springs commissioners upon the conflicting claims to the land involved in said cases, and also of the findings and decisions of said commissioners, as are relevant may be read in evidence by any of the parties, whether they are on file as exhibits in every case or not, and that all matters in regard to value of improvements now on ground shall be referred to master in chancery, after main case — decided, to hear testimony and report upon value to the court.

G. W. MURPHY, *Att'y.*
M. W. BENJAMIN,
Of Counsel for Plaintiff-.

(Endorsed:) Filed November 11th, 1886. Ralph L. Goodrich, clerk.

On the same day as follows:

22 WILLIAM H. GAINES and MARIA GAINES
vs.
CHARLOTTE COHN *et al.* } 639.

Come the complainants, by M. W. Benjamin, Esq., their solicitor, and come the defendants, by J. M. Harrell and G. W. Murphy, Esqs., their solicitors, and file herein their agreement as to depositions: which agreement is as follows:

In the Circuit Court of the United States for the Eastern District of Arkansas.

WM. H. GAINES and MARIA GAINES
vs.
CHARLOTTE COHN *et al.* } 639.

It is agreed that depositions in the above-entitled causes or either of them may be taken before any notary public after 1st April, 1885, at the office of J. M. Harrell, in Hot Springs, and read in evidence in all or any of the said causes on the hearing as far as relevant and competent, although not taken in terms in all of them; that the petition filed before the Hot Springs Commission by plaintiffs and the several defendants or persons under whom they claim for the land involved in these several cases or the certified copies

thereof may, as far as applicable and relevant, be read on said hearing by any of the parties, and that the certified copies of deeds annexed to defendants' answers or any of them are true copies and may be read also on the hearing without further proof of execution and without producing the originals, and that proof as to the value of the improvements need not be taken until after the hearing,
23 and that questions of the value of improvements shall in the cases in which the plaintiffs recover be after the hearing referred to.

(Signed) G. W. MURPHY, *Attorney,*
J. M. HARRELL, *Attorney,*
For Defendants.

(Signed) M. W. BENJAMIN,
Attorney for Plaintiffs.

STATE OF ARKANSAS, }
County of Garland. }

I, W. A. Kirk, a notary public within and for the county of Garland and State of Arkansas, do certify that the above and for-going is a true and complete and perfect copy of the agreement to take depositions in the case of Wm. H. and Maria Gaines, plaintiffs, and Charlotte Cohn *et al.*, defendants, pending in the circuit court of the United States for the eastern district of Arkansas, and signed G. W. Murphy and J. M. Harrell for defendants, and M. W. Benjamin for plaintiffs, which agreement I have this day furnished to the clerk of the United States court for the eastern district of Arkansas to be appended to the depositions taken under said agreement.

[SEAL.] W. A. KIRK,
Notary Public.

(Endorsed:) Filed November 11th, 1886. Ralph L. Goodrich, clerk.

UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 9th day of April, anno Domini one
24 thousand eight hundred and eighty-seven, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On August 29th, 1887:

No. 639. Decree.—Now, on this day, this cause coming on for final hearing upon the complaint of plaintiff, the aoswer of defendants, and replication and the evidence, and the court having heard the argument of counsel and being now sufficiently advised in the matter as to the proper decree to render herein, the court finds the board of commissioners mentioned in said complaint, by error and mistake of law, awarded the right to purchase lot seven (7), in block

one hundred and thirty (130), of the Hot Springs reservation, now in the city of Hot Springs, in Garland county, State of Arkansas, to Charlotte Cohn and issued a certificate of award, and in accordance with said erroneous ruling a patent has been issued improperly to said Charlotte Cohn, and the court is of the opinion that the said defendant Charlotte Cohn holds said patent in trust, as trustee, for the sole use of said William H. and Maria Gaines.

It is therefore considered and decreed that all the right, title, interest, and estate of the said defendant-, Charlotte Cohn and Henry Cohen, her husband, in and to said tract of land be, and the same is hereby, divested out of said defendant-, Charlotte Cohn and Henry Cohn, her husband, and vested in said plaintiffs, Wm. H. and Maria Gaines, and their heirs and assigns forever, and that said defendant Charlotte Cohn do make, seal, and deliver a deed conveying lot to said plaintiffs, their heirs and assigns forever, and that plaintiffs do have and recover possession of said lot and do have and recover all costs of suit herein; and said defendants pray an appeal, which is by the court granted.

And it is further ordered that the case be referred to N. W. Cox, Esq., special master of this court, who is directed to ascertain and report to this court at its next term:

First. The value of the rent of said lot since the award of
25 said commissioners.

Second. What amount of taxes has been paid on said lot by said defendant since the date of said award by said commissioners.

Third. The value of the improvements made upon said lot before and since the award of said commissioners, reporting the same separately.

And the said master may examine witnesses touching said matter, and shall reduce the same to writing and report their testimony so taken to this court; and it is further ordered that all questions of law touching the several matters herein referred to the master be, and the same are, reserved until the coming in of his report, and the case is reserved for fou-ther directions; and the court finds from the testimony adduced that the lot in controversy is at this date of the value of six thousand dollars.

UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 24th day of October, anno Domini one thousand eight hundred and eighty-seven, at the United States court-room, in the city of Little Rock, Arkansas, the Hon. David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On March 10th, 1888.

639. Comes N. W. Cox, master herein, and files his report; which report is as follows:

26 In the U. S. Circuit Court for the Eastern District of Arkansas.

WILLIAM H. GAINES and MARIA GAINES, His Wife, Plaintiffs,
vs.
CHARLOTTE COHN and R. H. COHN, Defendants. } 639.

To the hon. U. S. circuit court for the eastern district of Arkansas:

In compliance with the decree of this honorable court made September 8th, 1887, I have inquired into the matters therein required, and the result thereof will be found below. The parties did not present testimony in accordance with the present reading of said decree, but in accordance with the rulings of this hon. court made at its last term in similar cases. The testimony taken in said investigation is hereto attached and made a part of this report. I find by the testimony that the lot in controversy is fifty-two feet in width. Such being the case, I find—

That the rent thereon under the lease from the date of the award, Dec. 9th, 1879, to the date of the filing of the complaint herein, May 23rd, 1884, 4 yrs., 5 mos., 14 days, at $10 per front foot per annum	$2,298 10
Interest *in* same, 6 yrs., 17 days, at 6 % per annum	33 74
Rent from May 23rd, 1884, to September 8th, 1887, the date of the decree, 3 yrs., 3 mos., 15 days, at $10 per front foot	1,711 66
Interest on same, 2 yrs., 9 mos., 15 ds., at 6 %, to March 8, '88	282 23
Rent of lot and improvements from Sep. 8th, '87, to March 8th, '88, 6 mos., at $100 per month	600 00
Making	$5,725 73

The said defendants are entitled to the following credits, to wit:

27

Am't over		$5,725 73
Am't paid U. S. Government for purchase of lot May 23rd, '82	$416 00	
Interest on same to March 8th, '88, at 6 %	145 60	
Taxes for years *for years* 1882, '3, '4, '5, '6, including city taxes, less discount on account *on account* of State and county scrip issued	520 20	
Interest, 3 yrs., thereon, at 6%	93 63	
Amount of assessment for sewers	120 00	
Interest on same, 2 years	14 40	
Water and sewer connections (no date given)	200 00	
Present value of improvements	4,500 00	
		6,009 43
Balance in favor of defendants		$284 70

Respectfully submitted,

N. W. COX,
Special Master.

In the U. S. Circuit Court for the Eastern District of Arkansas.

WM. H. GAINES and WIFE, Pl'ffs,
vs.
CHARLOTTE and R. H. COHN, Def'ts. } No. 639.

The depositions of witnesses taken in the above-entitled cause by N. W. Cox, special master, at the office of R. G. Davies, Esq., in the city of Hot Springs, Arkansas, on the 14th day of February, 1888—present, the said plaintiffs, by R. G. Davies, Esq., their attorney, and the said defendants, — R. H. Cohen in person and G. W. Murphy, Esq., their attorney—said depositions taken under notice to defendants by the special master.

WM. H. GAINES, being introduced upon the part of the
28 plaintiffs and duly sworn, says:

Ques. 1. State your name, residence, and occupation; and are you one of the plaintiffs in this case?

Ans. My name is Wm. H. Gaines; residence, Hot Springs. I am one of the plaintiffs in this case.

Ques. 2. What did you lease the lot in controversy at per front foot?

Ans. Ten dollars per front foot.

Ques. 3. Has the property increased or decreased in value since that time?

Ans. Increased.

WM. H. GAINES.

A. B. GAINES, being introduced upon the part of the plaintiffs, and duly sworn, says to—

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is A. B. Gaines; age, thirty years; residence, Hot Springs; occupation, real-estate agent, &c.

Ques. 2. State if you are familiar with the rental of ground in Hot Springs since the 23rd day of May, 1884, the date of the bringing of this suit.

Ans. I am.

Ques. 3. What is it per front foot upon lot seven, in block one hundred and thirty, the lot in controversy in this cause, from that date to the date of the decree in this cause, September 8th, 1887?

Ans. Twelve and $\frac{50}{100}$ dollars per front foot.

Ques. 4. What is the rental value of the ground, with the improvements, now and since that time?

Ans. One hundred dollars per month.

A. B. GAINES.

29 C. N. RIX, being introduced upon the part of the plaintiffs and duly sworn, says:

Ques. 1. State your name, age, residence, and occupation.
Ans. My name is C. N. Rix; age, forty-five years; residence, Hot Springs; occupation, banker.
Ques. 2. State if you are familiar with the rental value of ground in Hot Springs since the date of bringing this suit, May 23rd, 1884.
Ans. Somewhat so.
Question 3. What is it per front foot upon lot 7, block 130, the lot in controversy in this cause, from that date to the date of the decree in this cause, September 8th, 1887?
Ans. About forty dollars per front foot.
Ques. 4. What is the rental value of the ground, with the improvements, now and since that time?
Ans. Ninety-five to one hundred dollars per month.

CHAS. N. RIX.

P. J. LEDVIDGE, being duly sworn on the part of the plaintiffs, says:

Ques. 1. State your name, age, residence, and occupation.
Ans. My name is P. J. Ledwidge; age, 45 years; residence, Hot Springs; occupation, contractor and builder.
Ques. 2. What is the present value of the improvements upon lot 7, block 130, in the city of Hot Springs?
Ans. Forty-five hundred dollars—three stores and twenty rooms.

P. J. LEDWIDGE.

VAN PATTEN, being duly sworn upon the part of the plaintiffs, says to—

Ques. 1. State your name, age, residence, and occupation.
30 Ans. My name is S. R. Van Patten; age, 33 years; residence, Hot Springs; occupation, architect.
Ques. 2. What is the present value of the improvements upon lot 7, block 130, city of Hot Springs?
Ans. Forty-five hundred dollars.

S. P. VAN PATTEN.

HENRY COHN, being introduced upon the part of the defendants, says:

Ques. 1. State your name, age, residence, and occupation.
Ans. My name is Henry Cohn; age, 43 years; residence, Hot Springs; occupation, merchant, and am one of the defendants in this cause.
Ques. 2. State what you know in relation to this property—as to its value—as required by the decree in this cause.
Ans. The ground rent of said lot per front foot per annum from

the date of bringing this suit, May 23rd, 1884, to the date of the decree in this cause, September, 8th, 1887, is worth from six to seven dollars per front foot, because the lot is short, being about sixty feet in length. Since the date of the decree, September 8th, 1887, the said lot and the improvements on the same have been worth per month about probably sixty-five dollars. The improvements upon the lot are worth about $5,500.00 in their present condition. I have paid taxes—city, county, and State—up to and including 1886, $649.50. I have paid for city sewer assessment $120.00, making sewer connections, &c., boxes, to keep pipes from freezing, filled with saw-dust, and putting in water-closets, $200.00. I raised building and — new posts under it, $265.00; building oak sidewalk, rock foundation, new posts, and new portico, $405.00; cost for repairs caused by raising the building, $300; damage done by two hailstorms to roofing and glazing, $62.00; threw new roofing on main building, $300; on the small building, $125.00; one extra large flue bsilt, 36.00; fencing under house and bracing posts, $70; attaching three fire-ladders on roof, $6.00; for preserving lantern, fixing closets, and in
31 fact all kinds of repairs about a building during the whole time, $1,100.00, including extra dormer windows. The present sidewalk, which is in course of erection by order of the city council, will cost 200. I paid the U. S. Government for the ground.

Cross-examination:

Ques. 1. What is the value per front foot of the lot, to sell?

Ans. *Ans.* I have no idea what it would bring, in the condition it ir now.

Ques. 2. What has such property generally sold for when it has been sold per front foot without improvements?

Ans. From one hundred to one hundred and twenty-five dollars per *pront* foot for lots sixty feet deep.

Ques. 3. How much have you been getting rent for three stairs down-stairs?

Ans. From ninety to one hundred dollarr.

Ques. 4. What have you been getting for the upstairs?

Ans. About twenty or twenty-five dollars per month, furnished. Out of that I consider the wear and tear on the furniture to be about half. I get $55.00 a month from Bergman for one store and the kitchen attached. One of the other stores I get $40 a month from—the "New York stire." For the third one, when rented, I get from twenty to twenty-five dollars; it is only thirty feet deep.

Ques. 5. What is money worth in Hot Springs?

Ans. From eight to ten per cent.

Ques. 6. Have you any mortgages upon the property; and, if so, what amount is due?

Ans. There is a mortgage of $2,500.00 due a man by the name of Whitlock, in California.

I would state that I take the vacancies that occur in rent-
32 ing, the wear and tear by tenants, and the investment of the

furniture, the interest on it. I wouldn't consider more than half the receipts as rental money.

I make claim for the old building that was burned down in 1878. It was worth $6,000. It was on the lot now in controversy.

HENRY COHN.

THEODORE S. SMITH, being introduced upon the part of the defendant Cohn, who, after being first duly sworn, says—

That he is a contractor and builder in the city of Hot Springs; that he has been in business in said city for the last eleven or twelve years; that he knows the improvements situated upon lot 7, block 130, in the city of Hot Springs, belonging to Mr. Cohn; that he has made a careful survey of the same, and estimate the same to be worth, as it now stands, $5,250.00.

Cross-examination:

Ques. 1. Is your estimate made from what it would cost to build another building upon the lot just like the one there now?

Ans. No, sir; we did not go into details in figuring the amount of lumber, nails, &c., it would take to build another like it.

Ques. 2. What would it cost?

Ans. The present building cost $4,750.00, and we put on it $500.00 for the addition of 16 ft. x 60 ft.

Ques. 3. When was it built?

Ans. It was built just after the big fire of March, 1878.

Ques. 4. That was ten years ago. Do you mean to say the building is worth as much now as it cost then?

Ans. I do not mean to say that.

Ques. 5. About how much—that is, what per cent.—would a wooden building such as that is deteriorate per year?

33 Ans. That would be hard to tell. It is a good deal how and where situate.

Ques. 6. Situated as that is.

Ans. I think the improvements have overrun the decay. I have worked upon it myself. I have worked to the amount of about $360 in the way of improvements upon it.

Ques. 7. What improvements have been made upon it?

Ans. The first improvement was in raising and putting a foundation under it worth $2.60; next, $96.00 for shingling; next for raising and earing one double door, and, if I mistake not, the house has had two roofs put upon it beside what I did. Then there was a lot of glazing done. I don't know what that cost. It was just after [the hailstorm three years ago. Then the awning was overhauled or rebuilt a time or two. I did not work on that.

Ques. 8. Is that all?

Ans. There was some other work done in grading down the room on the south side. I do not know what that cost or who did it. Then there was a sidewalk built of oak material.

Ques. 9. Was there anything else?

Ans. I know of nothing else.

Ques. 10. Is it not a fact that the average life of a brick building is not over twenty years?

A. I can't say. I never tested it nor saw it tested.

Ques. 11. How long would a wooden building such as this one last without repairs?

Ans. I can't say. I never saw it tested.

Redirect examination:

Ques. 12. You apprasied the property at what you considered the property worth now, did you not?

34 Ans. Yes.

Ques. 13. You allowed for the depreciation, did you not; and, if so, what would it be worth to build it to-day?

Ans. We allowed for the depreciation, but did not go into details as to what a new building would cost.

Ques. 14. What did the oak sidewalk cost?

Ans. It cost about $2.50 per foot. It is now torn away by order of city council and filled up with dirt. It was built by order of the city council some three or four years ago.

Ques. 15. After you raised the house what was its condition?

Ans. Bad—that is, the canvas and paper. The flues were damaged; the windows were all out of shape. It is a wooden building, canvassed and papered.

Ques. 16. What is the ground rent of said lot worth per front foot from May 23rd, 1884, to September 7th, 1887, per year?

Ans. I would think $7 per front foot per annum would be as much as the same is worth.

Recross-examination by DAVIES:

Ques. 17. What is the value per front foot of the ground without improvements?

Ans. I wouldn't consider it worth anything to a man without improvements upon it.

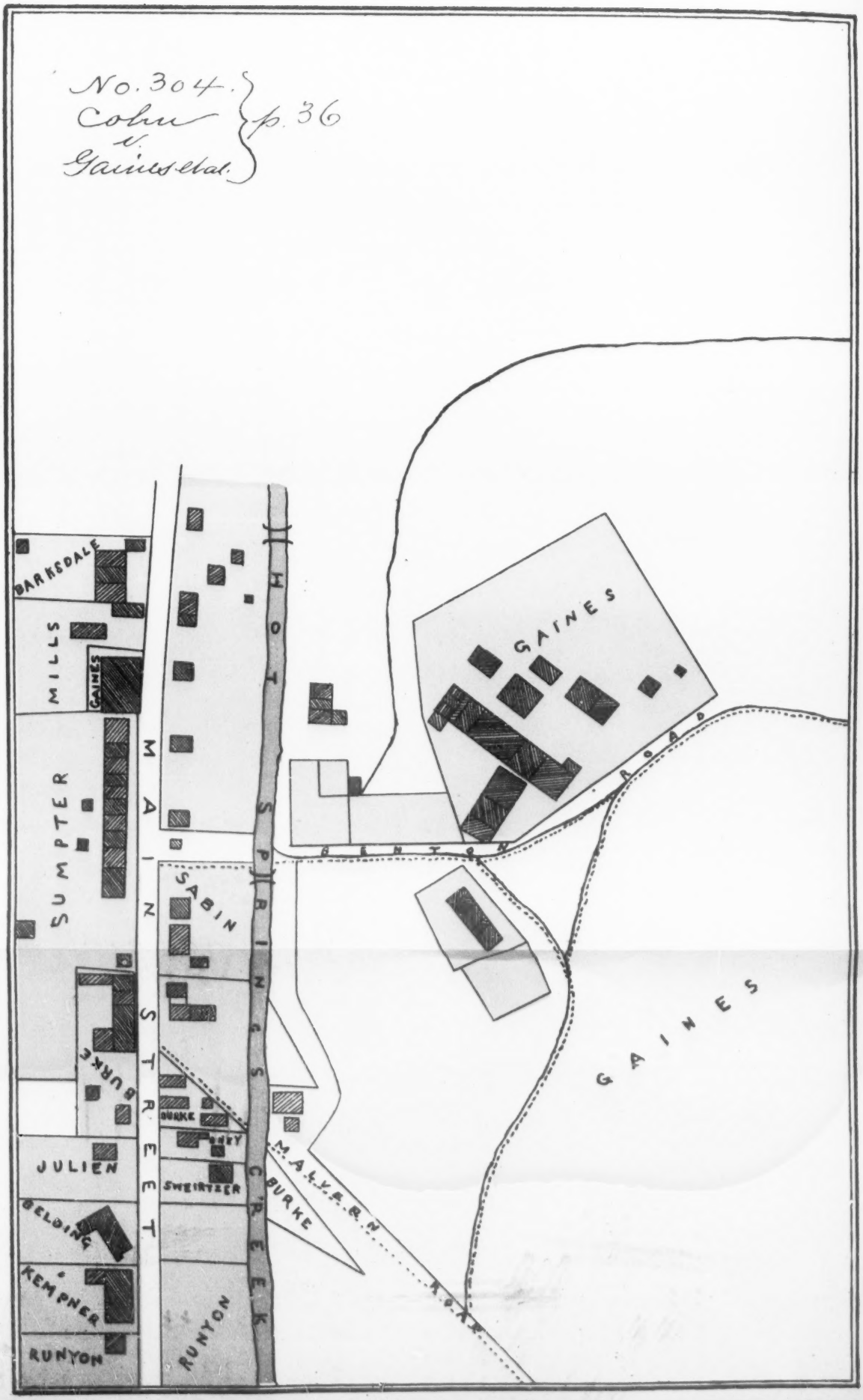
T. S. SMITH.

(Endorsed:) Filed March 10th, 1888. Ralph L. Goodrich, clerk.

And on the final hearing the following depositions and proofs were read.

(Here follow three maps marked pp. 35, 36, & 37.)

No. 304.
Cohn
v.
Gaines et al.
} p. 36



MAP SHOWING ALL IMPROVEMENTS

38 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., —— —, 188–.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed copy of petition No. 784, before the Hot Springs Commission, testimony submitted in support of same, and the finding of the commission are true and literal exemplifications from the originals on file or on record in this office.

United States General Land Office Seal.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

N. C. McFARLAND,
Commissioner of General Land Office.

[Endorsed:] No. 784. Hot Springs Commission. Petition of William H. and Maria Gaines. Filed Octo. 26th, '77. J. W. Anderson, cl'k H. S. com'rs.

39 UNITED STATES OF AMERICA:

Hot Springs Commission.

In the Matter of the Claim of WILLIAH H. GAINES and MARIA GAINES.

To the Hot Springs commissioners:

Your petitioners, William H. Gaines and Maria Gaines, now both in their own right, and for over twenty-five years residing at Hot Springs, in the State of Arkansas, upon the premises herein claimed, represent that they claim the following-described tract of land, a map of which is filed herewith and made a part hereof, marked Exhibit "A," situated in the Hot Springs reservation, which tract is bounded as follows, to wit: On the north by the Hot Springs Mountain reservation, with a line bearing as follows: S. 82° E. 260 feet, S. 12° 11′ E. 270 feet, N. 77° 43′ E. 680 feet, and N. 65° 03′ E. 586.3 feet, N. 88° 11′ E. 220 feet, N. 60° 19′ E. 500.1 *foot*, N. 44° 01′ E. 590 feet to ¼-sec. line between S. E. ¼ and S.W. ¼ of sec. 33, T. 2 S., R. 19 west; thence on the east by said line 1,325 feet south; thence on the south by the township line between T. 2 S. and T. 3 S.,
40 being south line of S. W. ¼ of sec. 33, T. 2 S., R. 19 W., running west 2,640 feet; thence to sec. cor. post for secs. 32 and 33, T. 2 S., and secs. 4 and 5, T. 3 S., all in R. 19 W.; thence on the west by the sec. line between secs. 32 and 33, T. 2 S., R. 19 W., 1,320 feet, running north to place of beginning, lying and being in the S. W. ¼ of sec. 33, T. 2 S., R. 19 west, except the following-described lands, a map of which is filed herewith and made part hereof, marked Exhibit "B," which lands your petitioners have sold and given to the following parties, to wit: Given to the Methodist Episcopal church the following lands: Commencing at a point 60 ft. N. of sec. cor. post for sect's 32 and 33, T. 2 S., and sect's 4 and 5, T. 3

S., all in R. 19 W., thence bearing S. 83° east one hundred and forty feet; thence N. 7° E. fifty (50) feet; thence N. 83° W. 150 feet; thence south 51 feet to place of beginning, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to Frank Horton the following lands: Commencing at a point N. 33° E. of sec. cor. post for secs. 32 and 33, T. 2 S., and sect's 4 and 5, T. 3 S., all in range 19 west and distant therefrom 305 ft., thence bearing south 84° E. 120 ft.; thence S. 6° E. 24 ft.; thence N. 84° E. 120 ft.; thence N. 6° E. 24 ft. to point of commencement, lying and being in the S. W. ¼ of S. W. ¼ of sec. 33, T. 2 S., R. 19 west, all the above bearings being read from the magnetic meridian.

41 Sold to Joseph Molen the following lands: Commencing at a point N. 35° 30′ W. of centr- subdivision stake on line bet. S. W. ¼ sec. 33, T. 2 S., and N. W. ¼ sec. 4, T. 3 S., R. 19 W., and distant therefrom 630 ft., thence bearing N. 29° 30′ W. 200 ft.; thence S. 60° W. 100 ft.; thence S. 29° 30′ E. 200 ft.; thence N. 60° E. 100 ft. to point of commencement, lying and being situate in the S. W. ¼ of S. W. ¼ of sec. 33, T. 2 S., R. 19 west, all the above bearings being read from the magnetic meridian. Sold to Thomas Secoy the following lands: Commencing at a point N. 87° 30′ W. of centre subdivision stake on line between S. W. ¼ of sec. 33, T. 2 S., and N. W. ¼ of sec. 4, T. 3 S., all in range 19 W. and distant therefrom 640 ft., thence bearing S. 37° 20′ E. 110 ft.; thence N. 81° 50′ E. 51 ft.; thence N. 37° 20′ W. 120 ft.; thence S. 60° W. 50 ft. to place of beginning, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to James Ritchie the following lands: Commencing at a point N. 35° E. of centre subdivision stake on line bet. S. W. ¼ of sec. 33, T. 2 S., and N. W. ¼ of sec. 4, T. 3 S., all in range 19 W. and distant therefrom 720 ft., thence bearing N. 60° E. 100 ft.; thence S. 29° E. 250 ft.; thence S. 43° W. 105 ft.; thence N. 29° W. 285 ft. to point of commencement, lying and being in S. E. ¼ of S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian.

42 Sold to C. S. Williamson the following lands: On the north by the old Benton road, with a line bearing N. 60° E. 150 ft.; thence on the east by the claim of Julia S. Carhart and D. Carey, with a line bearing S. 29° 30′ E. 430 ft.; thence on the south by Gaines avenue, with a line bearing S. 60° W. 150 ft.; thence on the west by the claim of Wm. H. Gaines, with a line bearing N. 29° 30′ W. 430 ft. to place of beginning, lying and being in the S. E. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to I. W. Carhart the following lands: Commencing at a point N. 60° E. of centre subdivision stake on line between S. W. ¼ of sec. 33, T. 2 S., and N.W. ¼ of sec. 4, T. 3 S., R. 19 W., and distant therefrom 735 ft., thence bearing N. 29° 30′ W. 230 ft., thence N. 60° E. 190 ft., thence S. 69° 51′ E. 480 ft., thence S. 29° 30′ E. 95 ft., thence S. 61° W. 400 ft., thence N. 29° 30′ W. 200 ft., thence S. 60° W. 100 ft. to point of commencement, lying and being in the S. E. ¼ of the S. W. ¼ of sec. 33, T. 2 S.,

R. 19 W., all the above bearings being read from the magnetic meridian. Given to Sarah Flowers the following lands: Commencing at a point N. 23° 10′ east of sec. cor. post for secs. 32 and 33, T. 2 S., and secs. 4 and 5, T. 3 S., all in range 19 W., and distant therefrom 505 ft., thence bearing N. 82° 15′ E. 72 ft., thence S. 7° 45′ E. 22½ ft., thence S. 82° 15′ W. 72 ft., thence N. 7° 45′ W. 22½ ft. to point of commencement, lying and being in the
43 S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 west, all the above bearings being read from the magnetic meridian. Given to Fannie Williamson the following lands: Commencing at a point N. 83° E. of sec. cor. post for seccs. 32 and 33, T. 2 S., and secs. 4 and 5, T. 3 S., all in range 19 west and distant therefrom 740 ft., thence bearing N. 40° W. 300 ft., thence S. 55° W. 40 ft., thence N. 40° W. 40 ft., thence S. 55° W. 70 ft., thence S. 23° E. 280 ft., thence N. 75° E. 200 ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being taken from the magnetic meridian. Given to Mary P. Gaines the following lands: Commencing at a point N. 21° 5′ E. of sec. cor. post for sect's 32 and 33, T. 2 S., and sect's 4 and 5, T. 3 S., all in range 19 west and distant therefrom 537 ft., thence bearing N. 79° E. 72 ft., thence S. 11° E. 41½ ft., thence S. 79° W. 72 ft., thence N. 11° W. 41½ ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to Wm. H. Nelson the following lands: Commencing at a point N. 28° E. of sec. cor. post for secs. 32 and 33, T. 2 S., and secs. 4 and 5, T. 3 S., all in range 19 west and distant therefrom 680 feet, thence bearing N. 58° E. 200 ft., thence N. 35° W. 135 ft., thence S. 75° W. 120 ft., thence 86° W. 170 ft., thence S. 75° E. 45 ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above
44 bearings being read from the magnetic meridian. Given to the Protestant Episcopal church the following lands: On the north by the claim of Wm. H. Gaines, with a line running N. 80° E. 65 ft.; on the east by the Gaines claim, with a line running S. 18° E. 70 ft.; on the south by the claim of S. W. Fordyce, with a line running N. 18° W. 108 ft.; thence N. 80 E. 50 ft.; thence S. 18° E. 20 ft. to the place of commencement, all the above bearings being read from the magnetic meridian.

Given to Kate McGrath the following lands: Commenceing at a point N. 9° 30′ E. of sec. cor. post for secs. 32 and 33, T. 2. S., and sec-. 4 and 5, T. 3 S., all in range 19 W. and distant therefrom 647 feet, thence bearing south 79° 30′ W. 102 ft., thence S. 10° 30′ E. 50 ft., thence N. 79° 30′ E. 102 ft., thence N. 10° 30′ W: 50 ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to George W. Baxter the following lands: Commencing at a point S. 12° 40′ E. of ¼-sec. post fret. sec'ts 32 and 33, T. 2 S., R. 19 W., and distant therefrom 1,492 ft., thence bearing south 85° 45′ W. 65 ft., thence S. 40° 15′ E. 12½ ft., thence N. 85° 45′ E. 65 ft., thence N. 40° 15′ W. 12½ ft. to point of com-

mencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the
45 magnetic meridian. Sold to B. W. Goode the following lands: Commencing at a point 13° 5′ E. of ¼-sec. post bet. secs. 32 and 33, T. 2 S., R. 19 W., and distant therefrom 1,420 ft., thence bearing S. 85° W. 100 ft., thence S. 50° E. 20 ft., thence N. 85° E. 100 ft., thence N. 50° W. 20 ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to G. L. Wilson the following lands: Commencing at a point S. 12° 20′ E. of ¼-sec. post between secs. 32 and 33, T. 2 S., R. 19 W., and distant therefrom 1,380 ft., thence bearing S. 89° 50′ W. 100 ft., thence S. 0° 10′ E. 35 ft., thence N. 89° 50′ E. 100 ft., thence N. 0° 10′ W. 35 feet to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Given to Albert Gaines the following lands: On the N. by the Hot Springs hotel property, the claim of W. H. Gaines, with a line bearing north 76° 30′ E. 50 ft.; thence on the east by Hot Springs creek, with a line bearing south 13° 30′ E. 63 ft.; thence on the south by the claim of Gordon, with a line bearing S. 75° W. 50 ft.; thence on the west by Valley St., with a line bearing N. 13° 30′ W. 62 ft. to point of beginning, including the office of A. K. Taylor, the entrance to Gaines' cottage, and the building occupied by Mr. Lemen, lying and being in the S. W. ¼ of the N. W. ¼ of sec. 33,
46 T. 2 S., R. 19 W.; also the following-described land: On the north by the claim of J. J. Sutton, with a line bearing N. 79° 30′ E. 185 ft.; thence on the east by Valley St., with a line bearing S. 10½° 20 ft.; thence on the south by the claims of Ellen McMurray, with a line bearing S. 79° 30′ W. 185 ft.; thence on the west by the section line bet. sect's 32 and 33, T. 2 S., R. 19 W., and the claim of J. J. Sumpter, with a line bearing N. 10° 30′ W. 20 ft. to place of beginning, lying and being in the S. W. ¼ of S. W. ¼ of sect'n 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Gave to Augustus L. Stitt the following lands: On the N. by the claim embracing the Garland house, with a line bearing N. 60° 45′ E. 80 ft.; thence *thence* on the east by the claim of the Peoria house and cemet-ry, with a line bearing S. 10° E. 140 ft.; thence on the S. by Malvern road, with a line bearing S. 60 W. 30 ft.; thence on the W. by the Malvern road, with a line bearing N. 32 W. 140 ft. to place of beginning; also the following: On the N. by the old Benton road, with a line bearing N. 60° E. 300 ft.; thence on the east by the claim of Jos. Molen, with a line bearing S. 26° E. 160 ft; thence on the south by the cemet-ry, with a line bearing S. 69° W. 180 ft. and N. 81° W. 110 ft. and S. 77½° W. 32 ft.; thence on the west by an alley fronting the Peoria house, with a line bearing N. 14° W. 50 ft. to place of beginning, lying and being in
47 the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being taken from the magnetic meridian. Sold to James Mingovan the following lands: Commencing at a point S. 17° W. of centre subdivision stake on line bet. S. E. ¼ and

S. W. ¼ of sec. 33, T. 2 S., R. 19 W., and distant therefrom 500 ft., thence bearing north 24° W. 475 ft.; thence S. 770 ft., W. 300 ft.; thence S. 35° E. 420 ft.; thence S. 88° 45 E. 250 ft. to point of commencement, lying and being in the S. W. ¼ of S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian; all of which lands thus sold or given away they set up no claim to; that the following improvements are situate upon the premises claimed by your petitioners, namely, four hotels, fifty-three stores, saloons, and restaurants and two livery stables, one planing mill, one woolen factory and four dwelling-houses, and various stables, cribs, wells, fencing and other improvements usual about hotels, storehouses, livery stables, and dwelling-houses; that the same were erected by your petitioners and their agents and tenants under contracts made with your petitioners previous to April 24th, 1876; that they are of the value of one hundred and fifty thousand dollars.

Your petitioners further say that they claim to be the owners
48 of the said premises and entitled to again purchase the same from the United States upon the following grounds, to wit: That in 1839 Lydia Belding made application as the widow of Ludixocus Belding to the proper United States land office to purchase the whole of the southwest quarter of section (33) thirty-three, in township two (2) south and range (19) nineteen west of the fifth principal meridian, a copy of which application is hereto attached and made part hereof, marked Exhibit "C;" that said Lydia Belding some time after she had made said application transferred her right to her children, Maria Gaines, wife of Wm. H. Gaines, and Albert Belding, George Belding, and Henry Belding, a copy of which relinquishment and transfer is hereto attached and marked Exhibit "D," and after a full examination of said application to enter and purchase said quarter section of land, the Secretary of the Interior, on the 21st day of November, 1851, instructed the commissioner of public lands to permit the heirs and legal representatives of Ludovicus Belding to enter and purchase said lands; that in pursuance of said order from the then Secretary of the Interior the commissioner of public lands instructed the register and receiver of the United States land office at Washington, in the State of Arkansas, to permit the heirs and legal representatives of said Ludovicus Belding to enter and
49 purchase said quarter section of land, and, in pursuance of said instruction, Maria Belding, wife of Wm. H. Gaines, Albert Belding, Henry Belding, and George Belding, heirs and legal representatives of Ludovicus Belding, on the 19th day of December, 1851, made application in the name of said heirs and legal representatives of said Ludovicus Belding to the said register and receiver at said land office at Washington, Arkansas, which land office was the proper land office for entering said land, a copy of which application is hereto attached and marked Exhibit "E," and prayed to be taken as a part hereof, and upon said application the said register and receiver permitted said Maria Gaines, wife of Wm. H. Gaines, Albert Belding, Henry Belding, and George Belding to enter and purchase the southwest quarter of section (33) thirty-

three, in township two (2) south, range (19) nineteen west, and said heirs and legal representatives did then and there enter and purchase said quarter section from the United States, and did then and there pay the United States the sum of two hundred dollars for said quarter section, that being the maximum price charged by the United States for her public lands. Said two hundred dollars were paid and advanced by Wm. H. Gaines, the husband of said Maria Gaines, late Maria Belding, and upon the payment of said
50 sum of money said heirs and legal representatives did, on the 19th day of December, 1851, receive from B. F. Hempstead, the duly authorized receiver of the United States land office at Washington, Arkansas, a patent certificate for said land, a copy of which is hereto attached, marked Exhibit "F," prayed to be taken as part hereof. The original is in the possession of your petitioners and subject to the order an- inspection of the honorable board of commissioners.

Your petitioners respectfully show and aver that by virtue of said entry and purchase and patent certificate therefor they were by the laws of the State of Arkansas and the laws of the United States legally entitled to have the possession and control of the whole of said quarter section of land thus entered and paid for, subject only to the rights of the United States Government; that notwithstanding the legal title still remained in the United States after said entry and purchase and the issuance of said patent certificate, still they by reason of said entry and purchase and the patent certificate issued therefor acquired an equitable estate in and to said quarter section, an estate that by the laws of the State of Arkansas and of the United States *were* hereditable, devisable, and assignable, so your petitioners aver that from the 19th day of December, 1851, to and including the 24th day of April, 1876, they not only had a legal right
51 in and to the possession of the premises herein claimed, but they had a legal right recognized by the laws of the State of Arkansas and by the United States to devise, sell, or lease the whole or any portion of said premises; that your petitioners' possession, more particularly hereafter set forth, was not the possession of a trespasser or a squatter on the public lands, but was a peaceable, lawful, and rightful possession under the laws both of the State of Arkansas and of the United States, and that the sales and leases are not the sales and leases of a trespasser or squarter upon the public lands, but were the sales and leases of parties legally in possession, and your petitioners are advised and aver the fact to be that all sales and all leases made by parties rightfully and legally in possession have always been recognized, countenanced, and held to be valid by both the courts of the State of Arkansas and of the United States as between the vendor and vendee and lessor and lessee and their privies.

Your petitioners show unto your honors that when they paid for and received said patent certificate they were not in possession of any portion of said quarter section of land, and that your petitioners recovered possession *to* a large and the most valuable portion of the premises now claimed by your petitioners through the courts

of the State and the Supreme Court of the United States
52 an account of the legal right to the possession and control of the lands and premises which your petitioners now claim.

Your petitioners respectfully show that at the time of said entry the northeast quarter of said quarter section was unoccupied, and the same is now included in the Hot Springs Mountain reservation, except about three acres in the southeast corner of said northeast quarter, which three acres, more or less, had been in the lawful possession of your petitioners for more than twenty years previous to April 24, 1876; the same was previous to that time fenced and improved by your petitioners. Your petitioners make no claim to any of said northeast quarter of the said southwest quarter, except said three acres, more or less, on the south of said new reservation. The northwest quarter of said southwest quarter, when entered as aforesaid, was, with the exception of some of the hot springs that are now included in the Hot Springs Mountain reservation, in the possession of John C. Hale and Henry M. Rector and other parties. Your petitioners recovered judgment against John C. Hale for the possession of so much of said northwest quarter of said southwest quarter as was occupied by him, and said judgment was affirmed by both the supreme court of the State of Arkansas and
53 of the United States, and also recovered judgment for possession against Henry M. Rector and others for the portion of said northwest quarter of said southwest quarter occupied by them; which judgments were affirmed by the supreme court of the State of Arkansas and of the United States, and, after said judgments were recovered and affirmed as aforesaid, said Hale and said Rector filed a bill in equity setting up an equitable title to said land and enjoining the execution of the judgment at law; which last suit was still pending in the United States Supreme Court on the 24th day of April, 1876, so that your petitioners never in fact had actual possession of said northwest quarter of said southwest quarter, and they do not now set up any claim to the same. The southeast quarter of said southwest quarter at the time of said entry was unoccupied, with the exception of about ten acres thereof in the southwest corner of said southeast quarter, which was cleared and fenced and in cultivation and occupied by Abigal Sabin, who soon afterwards married a Mr. Du Pas. Your petitioners, being willing to pay said Abigal Sabin as well as all others for the improvements that they had made, bought out said Abigal Sabin's claim, and she delivered the possession to your petitioners, and your
54 petitioners have remained in possession and control of said field ever since, and were in possession of the same on the 24th day of April, 1876. Your petitioners, after purchasing and paying for said improvements, afterwards took actual possession of the remainder of said southeast quarter of the southwest quarter and cleared off and fenced and improved the same, and was in continued possession of the same for more than twenty years previous to the 24th day of April, 1876, with exception of a small portion sold off to other parties which is hereinbefore set forth, and with the further exception of a few lawless trespassers whose tres-

passes will be hereafter set forth. Nearly all of the southwest quarter of the southwest quarter at the time of said entry was in the possession of Abigal Sabin, Lawson Runyon, Abraham Kempner, Mrs. Belding, Mrs. Julian, Patrick Burke, James Sumpter, Richard Puckett, Edward Mills, Jacob Sweiptzer, Samuel and Oney Macklin, Harrison D. Flowers, and E. G. Malone.

Abigal Sabin had at that time about ten or fifteen acres in the southeast corner of said southwest quarter cleared, fenced, and in cultivation, which, together with land adjoining that in the southwest corner of the southeast quarter of said southwest quarter, made a field from twenty to twenty-five acres, and said
55 Abigal had in addition thereto a small field between said field and Hot Springs mountain of about two acres, and had a lot of houses and stables about where the present residence of your petitioners is, all of which your petitioner, Wm. H. Gaines, bought of said Abigal Sabin and for which he paid the sum of seven hundred dollars, as will more fully appear by reference to a copy of Abigal Sabin's or Du Pas' agreement and receipt therefor, which is hereto attached and marked Exhibit "G," prayed to be taken as a part hereof; the original bill will be produced in evidence to the court. Your petitioner, Wm. H. Gaines, also paid E. G. Malone for his improvements, a house upon the west side of Main or Valley street, where the St. Louis saloon now stands. Lawson Runyon, Mrs. Belding, and Mrs. Julian surrendered their claims without any suit. Abigal Sabin had other claims that she refused to sell or surrender. Your petitioners, always desiring to deal fairly with all men, offered to pay all of said occupants for their improvements, but they refused to sell to your petitioners or to surrender to them, and on the 5th day of January, 1852, your petitioners brought suits in ejectment against Richard Puckett, Harrison D. Flowers, Samuel and Oney Macklin, Abigal Sabin, Patrick Burke, and James Sumpter, and in 1853 and 1854 the further suits in ejectment
56 against Jacob Sweiptzer, Abraham Kempner, Edward Mills, and Jacob W. Parker; said suits included all the property on both sides of Valley street from the now Guinn house property to the Earl house property and a mill on the east side of Hot Springs creek, just south of the Malvern crossing. This property was at that early day all enclosed, occupied, and improved; it had upon it mills, dwelling-houses, stores, hotels, livery stables, blacksmith and wagon shops, and various other buildings. Your petitioners, being legally entitled to the possession of said property by virtue of said patent certificate, recovered judgment for possession of all of said property in the years 1856 and 1858. On the 3rd of March, 1856, the clerk of Hot Springs county issued writs of possession upon said judgments, and on the 6th day of March, 1856, the sheriff put your petitioner, Wm. H. Gaines, into the possession of the mill-house and other improvements and lands occupied by J. W. Parker, on and east of Hot Springs creek, a copy of which writ is hereto attached, marked "H," and prayed to be taken as part hereof, and just north of the now Malvern crossing, and on the same day said sheriff put your petitioner, Wm. H. Gaines, into the possession of a dwelling-

house and outhouses occupied by Richard Puckett, which house and grounds were where the Hot Springs hotel now stands, a
57 copy of which writ is hereto attached and marked "I" and prayed to be made a part hereof; and on the same day said sheriff put your petitioner in possession of all the houses, buildings, improvements, and inclosures occupied by Harrison D. Flowers, which property included what is now occupied by G. L. Wilson and Central house, a copy of which writ is hereto attached, marked "J," and prayed to be taken as a part hereof; and on the same day said sheriff put your petitioner, Wm. H. Gaines, into the possession of the dwelling-house and outhouses and inclosures occupied by Samuel and Oney Macklin, on the east side of Valley street, which property included the property now leased by Louis Bertsch and Wm. Staats, a copy of which writ is hereto attached, marked "K," and prayed to be taken as a part hereof; and on the same day said sheriff put your petitioner into the possession of all the property occupied by Abigal Sabin's blacksmith shop and wood shop and other buildings, on the east side of Valley creek, which property included the property since leased to D. P. Beldin, J. W. Kimball, R. H. Colvin, and J. L. B. Caver by Wm. H. Gaines, and held and occupied by partee under said leases until and including April 24th, 1876, a copy of which writ is hereto attached, marked Exhibit "L," and prayed to be taken as a part hereof; and on the same day said sheriff put your petitioner, Wm. H. Gaines, in possession
58 of all the enclosures, storehouses, and dwellings occupied by Patrick Burke on both sides of Valley street, which property includes the property since leased to Bell and McCarthy, Herman Moscowitz, Philip A. Helfrick, J. W. Brantley, John Kubler, Green Payne, and H. C. Anderson by Wm. H. Gaines, and held and occupied by and under said lease until and including April 24th, 1876, a copy of which writ is hereto attached, marked Exhibit "M," and prayed to be taken as a part hereof; and on the same day said sheriff put your petitioner, Wm. H. Gaines, into possession of the inclosures, hotels, stores, and dwellings occupied by James Sumpter, on the west side of Valley street, which property includes the property leased to J. T. Chidester and Dr. O. A. Hobson and the open ground below Dr. O. A. Hobson's building and the ground occupied by Little and Jenkins on the west side of Valley street, and at the same time your petitioner had a judgment against said James Sumpter for one thousand dollars damages, and in consideration of your petitioner instructing the sheriff to return the execution satisfied the said Sumpter surrendered his lots and improvements he had possession of on the east side of Valley street to your petitioner and took a lease for the same, a copy of which writ is hereto attached, marked
59 "N." Said Chidester and Hobson held and occupied under said leases until and including April 24th, 1876, and on the — day of —— the sheriff of Hot Springs county put your petitioner, Wm. H. Gaines, into the possession of the lands, houses, and buildings occupied by Jacob Sweiptzer on the east side of Valley street, which property has since been leased by Fife and Houston and assigned to R. E. Allen and by Yonley & Bro., and was occupied on

said leases from the said — day of —— until and including the 24th day of April, 1876, a copy of which writ is hereto attached, marked "O," and prayed to be taken as a part hereof; so your petitioner- avers that on the — day of —— they not only had the legal but actual possession of the southwest quarter of the southwest quarter of said section thirty-three; that the same was fenced and improved at that date; that it had on it improvements worth the sum of five thousand dollars; that your petitioners kept possession and control of the same from that date until and including the 24th day of April, 1876; that they kept the improvements in repair, and in 1859 and 1860 caused to be built a theatre upon lands near Valley street just south of where the bridge now crosses the Hot Springs creek; also built other houses below the theatre, where the Cohn house now stands. Your petitioners aver that they have resided
60 on the premises claimed ever since 1852, a period of over twenty-five years. Your petitioners file herewith a map showing the improvements on the premises claimed in 1860, marked Exhibit "S." Your petitioners also aver that, being in the lawful, legal, and actual possession of said premises claimed in the year 1856, your petitioner, Wm. H. Gaines, on the 6th day of March, 1856, leased all the houses and outhouses, bath-houses, stables, gardens, lots, etc., to James Sumpter that had been occupied by James Sumpter before Wm. H. Gaines recovered the judgment and was put into possession by writ of possession heretofore referred to and compromise heretofore referred to, except one storehouse and two rooms then occupied by A. Kempner; said lands, houses, outhouses, and bath-house, stable, and garden are more particularly described in the lease, a copy of which is hereto attached, marked Exhibit "R," the original having been lost or mislaid, and which are also shown by map, showing old improvements, both of which are asked to be taken as a part hereof; and your petition-rs also, on the same day and year, rented one store-room and two rooms to A. Kempner, a copy of which lease is hereto attached, marked Exhibit "P," and prayed to be taken as a part hereof; said store and two rooms leased to Kempner occupied the ground now leased to J. T. Chi-
61 dester; and on the 8th day of December, 1857, your petitioners made the further lease of a part of the premises and improvements herein claimed to J. W. Parker, a copy of which lease is here*by* attached and prayed to be taken as a part hereof, marked Exhibit "Q." which lease included stables and buildings in the then forks of the road where the buildings commonly known as the Nichols, Vaughn, and Ducker building now stand; also a mill on the east side of the creek and north of the now Malvern crossing. All of said tenants occupied said premises under said lease until after the late civil war commenced, and said Sumpter renewed his lease until Hale was dispossessed by Gaines *et al.* Your petitioners aver that soon after J. W. Parker gave up possession of the premises between the then forks of the road they leased the same to John Sammons, who used a portion thereof for a blacksmith shop during the war, and it was reported to Maj. Gen'l Steele that John Sammons was in the habit of shoeing horses belonging to

guerillas, bushwhackers, &c., and a company of Federal soldiers were sent from Little Rock to Hot Springs to burn said shops and houses, and said shops and houses were burned in accordance with said instruction; and your petitioners are informed that afterwards various parties reported to Maj. Gen'l Steele, the Federal general commanding at Little Rock, that Mrs. Sumpter, the
62 widow of James Sumpter, was harboring, protecting, and feeding guerillas and bushwhackers in the houses that her husband, James Sumpter, had rented from your petitioner, Wm. H. Gaines, and Maj. Gen'l Steele sent another company from Little Rock to Hot Springs to burn said buildings, and said company did, in accordance with their orders, burn said buildings, together with the buildings that had been rented to A. Kempner, and which he had previously vacated; and they also burned at the same time the storehouse purchased of Malone. All of these buildings burned were the property of your petitioners. Your petitioners also aver that during the war the theatre building was destroyed and torn down by marauders.

Your petitioners aver that during the late civil war there were very few persons that visited the springs for their health, and the buildings owned by your petitioners for the use and accommodation of visitors became old and dilapidated, and when the war closed your petitioners began to repair their buildings for the purpose of renting the same to the public, and in 1870, in order to accommodate the public and for the purpose of improving and making valuable their property that they had thus acquired, and that the Supreme Court of the United States had decided that they were
63 entitled to have possession of and which your petitioners honestly believed they were entitled to and would soon receive a patent for, they built, at an expense of twenty-four thousand dollars, the Hot Springs hotel, the first large, commodious, first-class hotel ever built in Hot Springs. They also built and purchased before the 24th day of April, 1876, several other buildings, used as offices, storehouses, restaurants, saloons, and dwelling-houses. Your petitioners also refenced the premises herein claimed and cleared off a large portion of the ground claimed and put it into cultivation. Your petitioners also made large improvements to the houses in which they live. Your petitioners aver that the improvements that they have made independent of the improvements made by tenants of your petitioners, and which improvements made by tenants are by law also the improvements of your petitioners, as will be fully set forth hereinafter, cost at least the sum of sixty thousand dollars; and your petitioners show and aver that they have spent in defending the right conferred upon them to the premises claimed by the United States in issuing said patent certificate the sum of at least thirty thousand dollars in costs and lawyers' fees, and that they have paid about six
64 thousand dollars taxes to the State and county upon said premises; that your petitioners having purchased said premises from the United States Government, and honestly believing that they had a title to the same, and knowing that if said prem-

ises were sold for taxes their adversaries would buy it in and try to evict them upon such tax title, they always paid the taxes assessed against them on said premises promptly, and your petitioners aver that they had such confidence that they would get a patent to the whole of said quarter section of land, and had such a desire to have no cloud upon their title that they paid $416.00 taxes only — days before the Supreme Court of the United States declared that no one was entitled to a patent for said quarter section. Your petitioners aver that they have paid out for improvements, taxes, costs, lawyers' fees, and travelling expenses in attending court more than one hundred thousand dollars. Your petitioners have leased at various times a large portion of the property herein claim-, all which your petitioners herein set forth. Your petitioners aver that they
65 are the claimants and rightful occupants of said lands claimed; that they have caused all the improvements to be made that have been made thereon; that no one else have made any improvements thereon in their own right, but all buildings erected and improvements made by other parties than your petitioners upon said claim, other than those recovered in law by your petitioners, were made as the agents and tenants of your petitioners, under an express contract, and said buildings and improvements thus erected are now, in fact, in law, the buildings and improvements of your petitioners, and were the buildings and improvements of your petitioners on the 26th day of April, 1876, and were not the buildings of any one else, and all parties pretending to claim the same are estopped, both in law and equity, from setting up that they made the same in their own right, and are estopped, both in law and equity, from setting up that they occupied the respective premises claimed in any other manner than as agents and tenants of your petitioners; and your petitioners again aver that they are not only both the rightful claimants and rightful occupants, but that they are the only parties since 1852 that ever occupied the same in their own right; and they aver
66 that George Belding, Albert Belding, and Henry Belding having leased, assigned, transferred, and set over to your petitioners all their rights in and to said premises. Your petitioners again aver that they had, under a patent certificate from the United States, legally, peaceably, and uninterruptedly occupied said premises for more than twenty years previous to and including April 24th, 1876, and that they were the only parties that were upon the 24th day of April, 1876, occupying said premises in their own right. So your petitioners aver that, having once entered and paid the United States for the land claimed, which money the United States still retains, and having owned and made the first improvements on said premises, and having occupied in their own right and improved and caused to be improved in their own right said premises continuously and peaceably for more than twenty years previous to and including April 24th, 1876, and having paid taxes upon said lands for more than twenty years, and the Supreme Court of the United States having repeatedly decided that your petitioners were legally and rightfully entitled to the possession of

said lands and improvements, one of which decisions of the Supreme Court of the United States, declaring that your petitioners
67 are entitled to the premises in their possession and to the improvements made and caused to be made as against everybody except the United States, has been rendered since the decision of April 24th, 1876, and which decision the Supreme Court of the United States say is in harmony with the decision of April 24th, 1876, that they are by the laws of the land in equity and good conscience alone entitled to again purchase said premises from the United States. Wherefore they pray that the commissioners shall adjudge to them the right to purchase the said premises from the United States and for other proper relief.

WM. H. GAINES.
MARIA GAINES.

GENERAL LAND OFFICE, *November 25th*, 1851.

GENTLEMEN: The papers accompanying your letters of the 18th and 24th March last in reference to the claims of the Hot Springs, in Arkansas, having been submitted to the Secretary of the Interior for his action on the legal point in the case, to wit, the reservation of the land by Congress, they were returned to this office for its decision on the respective merits of the pre-emption claims, irrespective of this question.

68 On the 26th day of August last this office returned the papers with its decision adverse to the claims of the heirs of John Percifull and in favor of that of the heirs of Ludovicus Belding, it agreeing with you both as to the establishment of the facts of cultivation in 1829 and possession on May 29th, 1830, and regarding the objections of the receiver, founded upon the opinion that those acts were performed as the tenant of another as not affecting the validity of the claim. On the 14th ult. this office received the opinion and decision of the Secretary of the Interior, dated the 10th of that month, in which he sustains the existing validity of the act of the 20th April, 1832, it not having been repealed or affected by any subsequent law, and that therefore none of the claims preferred for this land are of any legality. On the said 14th ult. an application was made by the attorney of the heirs of Belding for permission to make an entry of said claim in order that they may be placed in a proper position for the assertion of their rights hereafter in the courts, stating that of course under the decision of the Secretary they should not ask for a patent.

This was refused by this office, and an appeal from that
69 action taken to the Secretary of the Interior, who on the 21st inst. addressed this office a letter, a copy of which is herewith enclosed. In accordance with the directions of the Secretary therein contained you are instructed to permit the "heirs of Ludovicus Belding" to make payment for the S. W. qr. sec. 33, T. 2 S., R. 19 W., as containing 160 acres, and, in addition to the ordinary entry thereof upon your books and the return to this office, you will note the fact of its interference with the New Madrid location of Langlois, of its embracing land directed to be reserved by act of 20th of

April, 1832, and that said entry is permitted under the Secretary's decision of the 21st November, 1851. Similar annotations will be made on the receiver's receipt and the register's certificate.

Respectfully, your obedient servant,

J. BUTTERFIELD,
Commissioner.

Register and receiver, Washington, Arkansas.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *November 21st*, 1851.

SIR: Upon consultation with the Attorney General, and after full consideration of the application of A. H. Lawrence, Esq., attorney for the heirs of Ludovicus Belding, one of the claimants to
70 the Hot Springs of Arkansas, on appeal from your decision of the 15th ultimo, against permitting said heirs to make entry under the acts of 29th May, 1830, and 14th July, 1832, I have concluded that it will be proper and in accordance with precedent to permit them to do so, and you will therefore instruct the register and receiver accordingly. Said entry will remain subject to the same power of revision and control by the General Land Office and this department as may be lawfully exercised over any ordinary entry. The Government will still hold the ultimate power of protecting its own rights, while the claimants will merely be placed in a position to contest the adverse claims of others to the same land.

I am, sir, respectfully your obedient servant,

ALEXANDER H. H. STUART, *Secretary.*

The Commissioner of the General Land Office.

No. 6545.

LAND OFFICE, WASHINGTON, ARKANSAS,
December 19th, 1851.

We, Maria Gaines, wife of William H. Gaines, late Maria Belding; Albert Belding, Henry Belding, and George Belding, heirs and legal representatives of Ludovicus Belding, deceased, of Hot Springs county, Arkansas, do hereby apply to purchase the southwest
71 quarter of section thirty-three (33), in township two (2) south, of range nineteen (19) west, as containing one hundred and sixty acres, for which we have agreed with the register, acting under instructions from the Commissioner of the General Land Office bearing date 25th November, 1851, to give at the rate of one dollar and twenty-five cents per acre.

A. BELDING.
MARIA GAINES.
HENRY BELDING.
GEORGE BELDING.

I, William H. Etter, register of the land office at Washington, Arkansas, do hereby certify that the tract above mentioned is sold

as containing one hundred and sixty acres, as mentioned above, and that the price agreed upon is one dollar and twenty-five cents per acre.

WM. H. ETTER, *Register.*

NOTE.—In accordance with instructions, I note the interference of this entry with the New Madrid location of Langlois, of it embracing land directed to be reserved by act of April 20th, 1832, and that the entry is permitted to be made under the decision of the Secretary of the Interior of November 21, 1851, transmitted to this office by Commissioner of General Land Office under date of 25th November, 1851.

W. H. ETTER, *Register.*

REGISTER'S OFFICE, WASHINGTON, ARKANSAS,
January 19th, 1852.

72 I, William H. Etter, register of the land office at Washington, Arkansas, do hereby certify that the foregoing pages contain a true copy of the letters received from the Commissioner of the General Land Office, the application filed, and the annotation on the tract book in this office made under said instructions.

WM. H. ETTER, *Register.*

No. 6545.

RECEIVER'S OFFICE AT WASHINGTON, ARKANSAS,
December 19th, 1851.

Received from Maria Gaines, wife of William H. Gaines, formerly Maria Belding; Albert Belding, Henry Belding, and George Belding, the heirs and legal representatives of Ludovicous Belding, deceased, of Hot Springs county, in the State of Arkansas, the sum of two hundred dollars in full for the southwest quarter of section thirty-three (33), in township two (2) south, of range nineteen west, containing one hundred and sixty acres (160), according to the return of the surveyor general, at $1.25 per acre. According to instructions I note that this entry interferes with the New Madrid location of Francis Langlois on the same lands, and also it embraces lands directed to be reserved by the act of Congress of the 20th April, 1832, and is only permitted to be made under the de-
73 cision of the Secretary of the Interior, under date of November 21st, 1851, and the instructions of the Commissioner of the General Land Office, under date of November 25th, 1851, in accordance with said decision.

$200. B. F. HEMPSTEAD, *Receiver.*

Receiver's Receipt, December 19th, 1851, *for* $200, *Entrance Money for Hot Springs Quarter Section* (*S. W.* — 33, *T.* 2 *S.*, *R.* 19 *W.*), "*G.*"

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *December 23rd*, 1873.

I, W. W. Curtis, acting Commissioner of the General Land Office,

do hereby certify that the annexed copy of the tract book showing the Washington, Arkansas, cash entry No. 6545, of Maria Gaines *et al.*, is a true and literal exemplification from the records of this office showing that said entry has not been cancelled.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above mentioned.

W. W. CURTIS,
Acting Commissioner of General Land Office.

(Part of section), S. W. ¼; (section), 33; (township), 2 S.; (range), 19 W.; (acres), 160; (rate per acre, dollars, cents), $1.25; (purchase-money), $200.00; (name of purchasers), Maria Gaines, late Maria Belding; Albert Belding, Henry Belding, and George
74 Belding, heirs of L. Belding; (date of sale), 1851—December 19; (number of receipt and certificate of purchase), 6545.

Abstracts of Land Sold in the Land Office to —— from the — Day of —— to the — Day of the Same Month, Inclusive.

(When sold), 19th December, 1851; (number of receipt and certificate), 6545; (by whom purchased, name), A. Belding, Maria Gaines, H. Belding, and George Belding, Hot Springs, per act of 20th April, 1832; (tract purchased) (section *of* part of section), (S. W. quarter, whole of); (number of section), 33; (number of township), 2 S.; (number of range), 19 W.; (quantity acres), 160; (price per acre) (dollars, cents), $1.25; (purchase-money) (dollars), $200; (section 33), township 28, range 19 W.; reserved by the order of the President May 16th, 1839, for —— ——.

UNITED STATES LAND OFFICE,
CAMDEN, ARKANSAS.

I hereby certify that the above and foregoing is a true and full copy of the tract book in relation to section thirty-three, township two south, of range nineteen west, as the same remains in this office.

Given under my hand this second day of January, 1874; and I am unable to find in this office any instruction to this office from the Secretary of the Interior or from the Commissioner of
75 the General Land Office, at Washington, D. C., to cancel the above entry of Belding and Gaines; therefore said entry is not cancelled, upon the records in this office, the 13th day of January, 1874.

N. N. RAWLINGS, *Register.*

STATE OF ARKANSAS,
County of Hot Springs, } *To wit:*

The State of Arkansas to the sheriff of Hot Springs county, Greeting:

Whereas on the second day of March, A. D. one thousand eight hundred and fifty-four, at our circuit court of Hot Springs county, by the consideration and judgment of said court, Wm. H. Gaines

and Maria Gaines, his wife; Albert Belding, Henry Belding, and George Belding recovered against Patrick Burke the sum of one hundred dollars, as well as the possession of certain lands and tenements situated in said county, namely, all that part of a certain tract or parcel of land known and described on the plat of the public survey as the southwest quarter of section thirty-three, in township two south of range ninetween west, described as follows, to wit: All that portion of said quarter section enclosed by the fence or enclosure now surrounding on three sides a certain tenement known as Burk's storehouse, including the land on which said storehouse is situated, the said store-
76 house being — what is known as Hot Springs valley, fronting on the west side of the stage road leading from the Hot Springs to Little Rock, and also a certain tenement now occupied by one Jacob W. Parker, including all the land enclosed by the fence now surrounding the same, and all the enclosures adjoining and connected with the same, the said last-mentioned tenement and enclosures being below and south of the point where the stage road crosses the Hot Springs creek west of said stage road and between that road and the road leading south from Hot Springs to the Washita, which was adjudged to them for their damages sustained in that behalf expended, and which costs are taxed and amount to the sum of twenty-two dollars and eighteen cents: You are therefore commanded that you forthwith deliver to the said Wm. H. Gaines and Maria Gaines, Albert Belding, Henry Belding, and George Belding possession of the premises above described; and you are further commanded that of the goods and chattels, lands and tenements, of the said Patrick Burke you cause to be made and levied the damages, together with costs aforesaid, and that you have the said damages and costs before our said circuit court, at the next February term thereof, on the second day of said term, and
77 you then and there certify how you have executed this writ.

In testimony whereof I, R. Striblong, clerk of the said court, have hereunto set my hand and (L. S.) affixed the seal of the said court this 23rd day of November, 1857.

R. STRIBLONG, *Clerk.*

I do certify that I have executed the within by putting the within-named Wm. H. Gaines in possession of the within-described property on the 26th day of November, 1857, as I am within commanded and the within named; and I further certify as to within-named damages of one hundred dollars, &c., I did not levy the same of the goods and chattels, lands and tenements, of said defendant Burk as I am within commanded because as to said damages I was enjoined and restrained by writ of injunction issued in that behalf by the clerk of Hot Springs county upon a bill filed by said Burk and others for that purpose this Feb'y 15th, 1858.

JOSEPH JESTER, *Sheriff.*

In the Matter of the Claim of Wm. H. Gaines and Maria Gaines, No. 784, Consolidated with Sundry Other Cases.

Monday, *February 11th*, 1878.

Forenoon Session.

Come now the claimants, William H. Gaines and Maria
78 Gaines, by their attorney, Hamilton Benjamin, and offer in evidence in support of their claim the following, to wit:

1. Certified copy of a transfer by Nancy Moore on the 3rd day of March, 1829, to Alexander L. Rogers, and assigned by said Rogers on the 5th day of December, 1829, to Wm. H. Moore, and on the 4th day of March, 1830, assigned by said Moore to L. Belding.

2. Certified copy from the records of the General Land Office of an application to the Secretary of the Interior by the attorney of the Belding heirs to purchase a certain quarter section of land in the Hot Springs Mountain reservation, together with the endorsement of the Attorney General in favor of the right of said Belding heirs to enter said land.

3. Instruction of the Secretary of the Interior, dated November 21, 1851, to the Commissioner of the General Land Office in regard to allowing said Belding heirs to enter said land.

4. The instruction of the commissioner of public lands, under date of August 20, 185–, in the form of a letter.

5. Copy certified by the register of the land office of the instructions issued by the Commissioner of the Land Office.

6. The application of the heirs of Ludovicus Belding to purchase and enter the southwest quarter of section 33, township 2 south, 19 west.

79 7. Receipt of the receiver of the land office, B. F. Hempstead, No. 6545, dated December 19th, 1851, for $200, for patent certificate for the southwest quarter of said section 33, township 2 south, 19 west.

8. Bill of sale of improvements of Abigail Dupas, late Abigail Sabin, dated March 25, 1852, to William H. Gaines.

9. Certified transcript of a judgment rendered in the Hot Springs circuit court at the February term, 1858, in favor of William H. Gaines *et al.* and against Jacob Sweiptzer.

10. Certified transcript of a judgment rendered in the Hot Springs circuit court on the 25th day of February, 1856, in favor of William H. Gaines and others and against Jacob Sweiptzer.

11. Certified transcript of a judgment of dismissal of appeal in the supreme court of Arkansas, dated February 18th, 1860, in case Wm. H. Gaines *et al. vs.* Jacob Sweiptzer, said judgment being the same rendered in the circuit court of Hot Springs county at February term of 1858.

12. Certified transcript of the record entry of the supreme court of Arkansas on appeal in said cause, dated July 6th, 1857, being in the case wherein judgment was rendered on the 25th day of February, 1856, in the Hot Springs circuit court.

80 13. Certified transcript of record entry in the Supreme Court of the United States in same case, December term, 1859.

14. Certified transcript of record in the supreme court of Arkansas in same case, dated in 1860.

15. Certified copy of record entry of the supreme court of Arkansas made on the 18th day of February, 1860, in the cause wherein judgment was rendered on the 25th day of February, 1856.

16. Certified copy of a judgment rendered on the 15th day of February, 1858, in the Hot Springs circuit court, in favor of Wm. H. Gaines *et al.* against Abraham Kempner, being the same incorporated with the petition of William H. and Maria Gaines, No. 784.

17. Certified transcript of the record entry of the supreme court in same case, appealed, made on the 18th day of February, 1860.

18. Certified transcript of record entry in suit in ejectment of William H. Gaines *vs.* Edmund Mills and Roxana Butler in Hot Springs circuit court, made February 25th, 1856.

19. Certified transcript of record entry of the supreme court of Arkansas in the case of Edmund Mills *et al. vs.* William P. Gaines, dated July 6th, 1857.

20. Certified transcript of record entry of the Supreme Court of the United States, on appeal of same case to that court, made
81 on the 9th day of January, 1860.

21. Certified transcript of record entry in the supreme court of Arkansas in same case, dated February 18th, 1860.

22. Certified transcript of record entry of the Hot Springs circuit court, in 1856, showing judgment against John C. Hale in favor of William H. Gaines and others, together with certified transcript of three record entries in same cause in the supreme court of Arkansas; also certified transcript of record entry in same case in the Supreme Court of the United States. (Messrs. John M. Harrell and W. P. Walsh enter their several objections to the admission of the foregoing transcripts in behalf of sundry claimants represented by them.)

23. Certified transcript of record entries in the supreme court of Arkansas in the case of Henry M. Rector *et al. vs.* Wm. H. Gaines *et al.*, together with a certified transcript of record entries made in the Supreme Court of the United States in the same cause.

24. Certified copy of record entry in the Supreme Court of the United States, December 2nd, 1859, in the case of William H. Gaines *et al. vs.* Loretta T. Hunter.

25. Certified transcript of judgment rendered in the Hot Springs circuit court on the 25th day of February, 1856, in favor of
82 William H. Gaines *et al. vs.* James Sumpter.

26. Writ of possession in case of Patrick Burke *vs.* Wm. H. Gaines *et al.* in the supreme court of Arkansas.

27. Certified transcript of record entries in the supreme court of Arkansas in the case of Loretta T. Hunter *vs.* Wm. H. Gaines *et al.*, July term, 1855.

28. Writs of possession, with the sheriff's return thereon endorsed, in case of Wm. H. Gaines *et al. vs.* J. W. Parker, Hot Springs circuit court, March 3rd, 1856, returned same day.

29. Writs of possession and sheriff's return thereon in case of Wm. H. Gaines *et al. vs.* J. W. Parker, in the Hot Springs circuit court, issued March 3rd, 1856, and returned March 11th, 1856; also writ of possession and sheriff's return thereon in the following cases, in all whereof Wm. H. Gaines *et al.* were plaintiffs, to wit: Richard Puckett, issued March 3rd, 1856, returned March 10th, 1856; Harrison D. Flowers, issued March 3rd, 1856, and returned June 16th, 1856; Samuel Macklin *et al.*, issued March 3rd, 1856, returned March 10th, 1856; Abigail Sabin, issued March 3rd, 1856, returned May 1st, 1856; Patrick Burke, issued November 23rd, 1857, returned Feb'y 15th, 1858; James Sumpter, issued March 3rd, 1856, returnable March 10th, 1856; all of which are certified by the clerk of Hot Springs county in 1858. (John M. Harrell and W. P. Walsh severally in behalf of sundry parties represented by them object to the admission of the above-described writs.)

83 WILLIAM H. GAINES, being first duly sworn, testified as follows:

Questions by his attorney, H. BENJAMIN:

1st Q. State your name, age, and residence.

A. Wm. H. Gaines; age, 80; residence, Hot Springs.

2nd Q. State to the commission in your own way the general history of this case.

—. My name is Wm. H. Gaines, 80 years of age, and have kept house here for the last 25 years. I am one of the claimants in claim No. 784. I married one of the heirs of Ludovicus Belding in the year 1849. I do not recollect what year it was, but think it was about the year 1851, I went to Washington to investigate all the claims on the Hot Springs property. I found Mrs. Belding had proved up a pre-emption in the year 1839, and came to the conclusion that she had the best title of the three claims I found in the Land Office. I employed A. H. Lawrence to investigate those claims, and came to the conclusion to prosecute the claim of the Belding heirs, and made application to the Secretary of the Interior to have that claim referred back to the district land office to be reproved up, clothing the other claimants with authority to examine, disprove, or invalidate the testimony if they saw fit. I do not recollect exactly what time we were in Washington, but think it was in the summer or fall of 1850. It was referred back to the district land officers to be reproved and investigated, and on the 22nd of January, 1851, Lydia Belding, widow of Ludovicus Belding, relinquished her
84 right in favor of her children, the heirs of Ludovicus Belding. The proof was taken up and well cross-examined by Rector and Hale. When the proof went to Washington her attorney made application to enter the land, which the Commissioner of the Land Office refused, and he appealed to the Secretary of the Interior. The Secretary of the Interior first decided against the entry, and we appealed to the Attorney General. The Secretary of the Interior in his letter to the Commissioner, after a full consideration and consultation with the Attorney General, came

to the conclusion that it was right and proper to admit the entry of the Belding heirs, and directed him to so instruct the district land officers in Arkansas. He did so instruct them, and the entry was made in the name of the four heirs, and I advanced the purchase-money, the sum of two hundred dollars, which was paid to the Government and which the Government still holds. It has never been repaid to the heirs. When I entered this I received a patent certificate in the name of the heirs for the southwest quarter of section 33, township 2 south, range 19 west, in the State of Arkansas. After getting the certificate of entry I came directly to the Hot Springs and purchased of Abigail Sabin all her improvements east of Hot Springs creek, which included all the improvements east of said creek except a small house occupied by Richard Puckette, where the Hot Springs house now stands, and a small cabin above the Puckette house and a cabin and mill near the now Malvern
85 crossing and an enclosure below the Malvern crossing and between the Malvern road and Hot Springs creek of Patrick Burke. Said Abigail Sabin's improvements consisted of a lot of cabins, cribs, stables, gardens, and lots where and near where I have since resided at the springs, and also included two springs on the mountain and a large field east of the New Malvern road and south of the now Gaines avenue, making in all 20 acres, more or less. These improvements purchased, with the exceptions named, were all the improvements that were on the south half of the southwest quarter of section 33, township 2 south, range 19 west, east of the Hot Springs creek. These fields were all enclosed with fences when I bought them, and had been in cultivation apparently for several years, and have been occupied by me and kept fenced ever since—from the time of said purchase up to and including the 24th of April, 1876—and a large portion of the time I have had them in cultivation. At that time there was no one living on this quarter section, east of the improvements I bought of Mrs. Sabin, and continued to be none until after the close of the war. I took charge of the land and prevented people from cutting timber as long as I could keep them off, and paid taxes on it from the time it was entered to the date of the decree. The improvements that were excepted were right along on the creek bank. The west side of
86 Hot Springs creek, at the time of making this entry, was in the possession of Lawson Runyon, Abraham Kempner, Mrs. Belding, Mrs. Julian, Patrick Burke, James Sumpter, E. G. Malone, Edmund Mills, Harrison D. Flowers, Abigail Sabin, Sam. and Oney Macklin, and Jacob Switzer, and on the 5th of January, 1852, in the name of myself and Belding heirs I commenced suits of ejectment in the Hot Springs circuit court against Richard Puckette, Harrison D. Flowers, Patrick Burke, Abigail Sabin, James Sumpter, and soon thereafter I commenced suits against Jacob W. Parker, who was in possession of the mill and cabin, and Edmund Mills, James Switzer, and Abraham Kempner. I recovered judgment in the first lot of cases commenced in 1856, and writs of possession were issued on said judgments and I was put in possession of the property. I afterwards recovered judgment in the other cases and was put in posses-

sion of the property, most of it on the 6th of March, 1856. I continued in possession of said property until dispossessed by the decision of the Supreme Court of the United States, April 24th, 1876. During that time several parties tried to jump my possessions, but I have always applied to the court and dispossessed them. The improvements claimed by E. G. Malone I purchased soon after
I bought out Abigail Sabin. I repaired the cabins, lived
87 in them three or four years, and then built my dwelling-
house that my family has resided in and occupied up to last December. Soon after I purchased of Abigail Sabin I enlarged my fields and repaired and built new fences and took in ten or twelve acres more of ground on what is now the north side of Gaines avenue. Soon after I was put in possession by the writs above named I commenced building new hewed-log cabins. I built three double log cabins and afterwards built one more log cabin joining the property that had been occupied by Mrs. Julian. On the west side I enclosed it all with a good fence, on the east side of what is now Valley street, commencing near the bridge that crosses the creek south of the Hot Springs hotel and extending down to about two feet into the now Cohn building. Mr. Turnbull put up a theatre one hundred feet long, forty feet wide, and seventeen feet high. George Belding and I purchased this theatre of Turnbull in 1859, and George Belding afterwards sold his part of the house to me, and below the theatre, the same fall, I built a large room for a dining-room, and put up two good size log rooms in front of the dining-room with a hall between them, about six feet south of the
south end of the theatre, and cut the theatre up into, I
88 think, thirty-two bed-rooms, afterwards making a two-story
house for the purpose of boarding-house or hotel. About this time I enclosed all below the property that had formerly been occupied by Switzer between the street and the creek, west of the creek, down to the section line, and made a kiln of brick there. I made no other improvements of importance until after the close of the war. At the beginning of the war, including the houses that I purchased and recovered by suits of ejectment and built myself, I had twenty houses, one mill, one house used for a hotel, and one of the twenty houses was a row of houses of ten or eleven rooms that I *I* recovered from Sumpter. During the war the hotel house, formerly the theatre, was destroyed by marauders and trespassers, so that I had to tear down the remnants to save what lumber there was. During the war the improvements that I had recovered of Burke that were on the east side of the road where the Nichols, Vaughn, and Ducker buildings now stand were destroyed by fire; they were burned by Federal troops. These troops also burned the row of houses recovered from Sumpter, and also the house that I purchased of Malone. In the spring of 1865 Mrs. Gaines fenced in nearly
all the ground recovered from James Sumpter east of the
89 now Sumpter house. The houses formerly upon this ground
were burned during the war. I had a number of the old houses that were left standing repaired so as to make them tenantable. Soon after repairing the old houses I caused to be fenced up

all the property between the Malvern road and Hot Springs creek down to the line to be used for a brick yark, and had the fences repaired for the fields that I had before the war, and cultivated and occupied the same until after the decision of April 24th, 1876. In 1870 Mrs. Gaines, one of the petitioners, built the Hot Springs hotel, which was the first fine hotel ever erected in Hot Springs. It cost about twenty-four thousand dollars and was the principal and leading hotel until the Arlington was built. The same year I built the house now held, under a lease from the receiver, by William Staats and also claimed by him before this commission, the said house being situated the second house below the Malvern crossing, on the east side of Valley street. This house cost five hundred dollars. In 1871 I built the barber shop north of the Hot Springs hotel, which cost about one hundred and fifty dollars. I also built the office south of the Hot Springs hotel now occupied by
90 Dr. Taylor, which cost about four hundred dollars. I also, the same year, built the bakery, the first building south of Dr. Taylor's office, which cost about four hundred dollars. Soon after this year I built the house south of the now Malvern crossing, which is now held under a lease from the receiver and claimed by Rachael Bertsch. I next built the house and stables south of the now Cohn house, and which are now held, under a lease from the receiver, by Thall and others. These buildings cost about six hundred dollars. The next building south of the stable I bought from Cloyes. This building is now held by Julius Breytie under a lease from the receiver, and is also claimed by Breytie before this commission. I soon after bought of Leeson the house on the west side of the street just south of the house of Sutton, the cost of which is estimated at a thousand dollars. I also built three cottages north of the cemetery, which cost six hundred dollars apiece. I also built two storehouses south of the Garland house, which cost about nine hundred dollars. I also built two cottages on the Malvern road nearly west of the cemetery, one costing six hundred dollars, the other three hundred. I also bought a house of N. H. Cloyes south of these two cottages on the Malvern road for three hundred dollars. I also bought a blacksmith shop on the Malvern road. I also bought a stable of Mr. Bell on the
91 Benton road. In the year 1874 I fenced all north of the Benton road to near the east line and to what I supposed to be the east line and north on the east line away up into the mountain and thence west to include the hot springs obtained from Abigail Sabin. This fence made a complete enclosure of all the ground now claimed by me north of the Benton road. This was a good, substantial fence, except some portion of the mountain, where it was impossible to make a first-class fence. In addition to buildings put up by the petitioners in person I made fifty or sixty leases or contracts to various persons to put up buildings on the ground claimed and occupied by me. In a large portion of these cases my old buildings had to be torn away to make room for better buildings. I enlarged my residence by building eight rooms, which cost me about sixteen hundred dollars. I have resided continuously

upon the property claimed in the petition ever since the year 1852 until December last, a period of about twenty-six years, and during all that time the petitioners are the only ones that have occupied this ground as their own except a few negroes in the southeast corner of the quarter section, who have been holding adversely to your petitioners. With this exception there has been no one since I recovered these lands, in the year 1856, who has lived upon any portion of it and claimed or occupied the same as their own.

92 Your petitioners are and have been all this time the sole occupants in their own right. All other parties, with the exception of the negroes referred to above, that have lived upon the same have done so under contracts with your petitioners, recognizing and treating them as landlords. During all this time I believed that I had the title to said lands and have paid taxes upon said lands ever since I entered and paid for the same at the United States land office. I know of no one else that has paid any taxes upon said lands or ever pretended to give them for assessment. I so strongly believed that this property was mine and that I would get a title to it that I paid the taxes for the year 1875 only a few days before the decree of April 24th, 1876. I have been a *bona fide* occupant of these lands for more than a quarter of a century, and during that time I have exercised and had the same control over the lands claimed that any person could or would exercise over lands that they held a patent for from the United States. When A. O. Morgan, the United States receiver, took possession I was the first man on the reservation to turn over my property to him. I turned over all property held by myself, both that held in person and that held by my tenants.

93 Cross-examined by JOHN M. HARRELL, representing No. 1, claim of Algernon S. Garnett, M. J. Towle and wife, James O. Ducker, Rachel Burch, and sundry other conflicting claims:

3rd Q. You say your fence north of the Benton road fell short of the section line?

A. Yes.

4th Q. How far?

A. I cannot say exactly.

5th Q. Did it go beyond the ground of James O. Ducker?

A. Yes; it enclosed that ground.

6th Q. You use the word "enclosed," understanding what it means, and deliberately, do you?

A. Yes; I had it all under fence.

7th Q. Did you not merely build a line of fence between him and the road and stop there?

A. I enclosed every inch of that ground.

8th Q. You had Mr. Ducker under arrest for trespass about 10 days, had you not?

A. Yes; I had some trouble with him. He broke my fence down.

9th Q. Did you take the lumber that he had on that ground and appropriate it to your own use or cause it to be appropriated?

A. No, sir.

10th Q. What did you do with the posts he put there?

A. I never had anything to do with them. I do not know who removed them. I think I stopped him by injunction.

94 11th Q. How many buildings do you say you had possession of just before the war?

A. About 20.

12th Q. Where did they stand?

A. The theatre building stood south of the Hot Springs hotel, for one. I have mentioned all these places already in my testimony.

13th Q. They were destroyed during the war by fire?

A. Yes, sir; the theatre was getting destroyed by their tearing doors down, and so on, and there was a great deal of good lumber in it, and I tore it down to save it from being destroyed.

14th Q. Which of the buildings were not destroyed?

A. My dwelling-house was not. The church was not destroyed. Above there there were some few cabins along where the Citizen's stable is, from there down to the St. Louis saloon, that were destroyed. The buildings that I put up previous to the war, along down the lower end of the valley, were not destroyed. On the west side of Valley street there were 8 log cabins that I built that were not destroyed. There were three double ones and one with two rooms in it, making eight rooms in all. They commenced down about where Smith's mattress-house is and ran up north. They were about 20 feet apart.

Q. Are those buildings there yet?

95 A. No, sir; they were torn down in order to lease the ground. Some of them fell down, and I may have hauled them off or given them away. They ran up to the new Malvern crossing, and the north one a little higher, maybe.

Q. When did you fence in from the Malvern crossing down to the section line?

A. In 1858, after I built the log cabins. I fenced along in front of them, leaving a space between the fence and the cabins of 8 or 10 feet. It was plank fence; it was burnt up and torn away during the war.

Q. Did that fence form an enclosure?

A. Yes.

Q. Was there another fence in the rear of the house?

A. Yes; there was a rail fence between the Sumpter ground and the Burke ground.

Q. Whose property did you claim that to be in 1858—those cabins and that fence?

A. I was acting as agent for the Belding heirs, but I claimed the house that I put up as my own. They were put up and purchased with my own money.

Q. Those 20 houses that were standing there just before the war you claimed as the property of the Belding heirs, did you?

A. No, sir.

Q. Which of them did you claim as your individual property?

96 A. My residence and those log houses that I built.

Q. Did you claim the old theatre?

A. Yes; and the log houses south of the theatre. I built them—that is, on the east side of Valley street.

Q. State what you think those houses and all the property claimed by you was worth at that time.

A. The theatre cost me $1,700; the log houses south of it—I worked on them with my own hands—they are, all together, worth about $500, on the theatre side of the street.

Q. What were those buildings that were on the other side of the street worth, from the mattress-maker's up?

A. Labor was cheap when I built them; they were simple log cabins, one room, 16 or 17 feet square.

Q. Which was the most valuable improvement you owned at that time?

A. The dwelling-house.

Q. Which next?

A. The theatre.

Q. Did you own any other valuable improvement at that time besides the log houses, the theatre, and the dwelling-house?

A. Yes; the field that I bought of Mrs. Sabin. It is south of Gaines avenue—the biggest field. The north line of the fence

97 ran in Gaines avenue; on the west it ran out to the Malvern road; on the south to the line of the southwest quarter of section 33. The east line of the field was out somewhere beyond, where a colored man named Thal lived at that time. It was much bigger than it is now, because part of it ran down into section No. 4. I think more than half of it was in section four. It included where that house was and several other lots up there. My purchase included lots around my present dwelling-house and a little field, in woods, where the cemetery is. I fenced in 10 or 12 acres north there and drew the fence in so as to turn over to Mrs. Sabin what was outside of what I entered. I drew the line in on the east to make it more square. I fenced in what lies north or Gaines avenue a year or two after I bought it, as soon as I knew where the lines were.

Q. Was it enclosed when you bought it?

A. It was.

Q. What did you consider it worth?

A. I paid $700 for it. I consider it worth all of that.

Q. What other valuable property did you own at that time?

A. I have stated all about that. I had a kiln of brick made on the east side of Valley street, between that and the creek.

98 That was the first brick-kiln I had made; that was made before the war. After the war I contracted with Cloyes to make brick for me and gave him a percentage of what brick he made. On that thin strip of ground, where the Cincinnati house burned down and where the Surprise house stands, was made two kilns of brick, and that was done since the war.

Q. Which was the property of the Belding heirs?

A. I have a transfer from them; it is all mine.

Q. Were those transfers made prior to your petition in bankruptcy?

A. Very recently; since they have been hunted up to give me trouble.

Q. Did you put in any of this property in your petition in bankruptcy?

A. I did not. I consulted my lawyer, Judge Watkins, who knew all about it, and he said it should not go in. I went through bankruptcy and was honorably discharged seven or eight years ago.

Q. When did you file your petition in bankruptcy?

A. I cannot recollect the date.

Q. Did you transfer it then to the Belding heirs?

A. No, sir.

Q. You did not see proper to claim it when you went into bankruptcy?

A. I did not.

Q. You bought certain improvements that were erected?

A. Yes.

99 Q. Were they within these enclosures that you speak of?

A. Yes; all except the part of Mrs. Sabin's field, which I gave back to her.

Q. In whose right do you make your claim now to this property?

A. In the right of Maria Gaines and myself.

Q. Did the Belding heirs file any petition?

A. No, sir; I am controlling it all myself.

Q. Where was this Cloyes house that you bought?

A. Part of the brick yard there.

Q. Where was the blacksmith shop?

A. It is there now. I bought it from Cloyes. It was considered in the $300. There were some improvements that he had put on it that I bought of him. It was considered in the $300.

Q. You say that since you recovered these lands, in 1856, no one has resided on them except yourself or owned them?

A. I do not think that anybody has ever claimed them in their own right as we have.

Q. What lands are referred to in your petition?

A. The southwest quarter of section 33, township 2 south, — 19 west.

Q. How do these people happen to be there unless they have resided on it?

A. They were not there in their own right.

Q. Some of them have built improvements upon it, have they not?

100 A. Yes.

Q. And without your assistance?

A. They generally leased the ground from me.

Q. Did M. W. Towle lease any from you?

A. He made a bargain with my agent to lease it. I have no written lease.

Q. Did you contribute any money to the building of the improvements erected on that ground by Mr. Towle or give him any assistance of any kind?

A. No, sir.

Q. Who built the Salmons house, near the Methodist church, that Mrs. Burch lives in?

A. Allen Salmons.

Q. Did you agree with him to let him have that 20-feet alleyway leading down from his house?

A. No, sir; I might have agreed to let him use it. He agreed that he would keep off of the quarter section, and I believe he did. I do not think it is on that quarter section at all.

Q. The new Valley house, now used as the court-house, did you contribute any money or any assistance to the erection of that building?

A. Yes, sir; I loaned the old man fifty dollars, and he said he wanted to put it in that building.

Q. Did you know him very well?

101 A. He had been a very good tenant and paid punctually and he leased the ground. I have his note for $50 for the money I lent him. He wanted to keep it, and I told him to keep it awhile.

Q. His note is out of date, is it not?

A. I do not think it is.

Q. That is all you had to do with erecting that house?

A. Yes.

Q. The house of Mr. Ducker, the three-story house on the corner of Malvern crossing, did you contribute money or assistance to the erection of that house?

A. No, sir.

Q. The stable that Gillis had and sold there, did you contribute any money to build that or any means of any kind?

A. Yes; I furnished all the lumber.

Q. You have stated all the buildings you have erected since the war, have you?

A. Yes; I aimed to name every one that I erected. I show vouchers for the building and leasing my house to Burch, and so on. Then it was turned over to the receiver. He has held possession. Those are the houses I built myself. The Gillis property was built by me under written contract.

Q. Did you make any distinction in your testimony between the buildings you erected and those built by old tenants?

102 A. I have not said a word about my tenants' building: only that I had 50 or 60 tenants who leased. I described my own buildings.

Q. You said in your testimony that you were the first man that turned over that property to the receiver. How did you turn it over?

A. I had an interview with Mr. Morgan, in which he told me that he would live up to the instructions of Judge Gray, and that my tenants should have the preference in the right to lease. I thought

maybe I could get a chance to lease my houses. I tried him the second time, and he was very positive that my tenants should have the preference. I told him I would throw no obstacle in his way, and that if he would send his clerk around with me we would go around, and I would show him every house I owned and tell him who lived in it and turn them over to him, which was done. Captain Peck went around with my son, who was attending to the collection of the rents for me, and he turned the houses over to him. My tenants then leased from the receiver. The houses were not turned over to the tenants.

Q. The receiver preferred to lease the ground to the occupants?

A. Those were his instructions.

Q. What did you lease from the receiver?

A. I first leased my dwelling-house—my wife did.

103 Q. How much property did you lease in connection with your dwelling-house?

A. There was a little difference between Mr. Morgan and me. I got him to make out the application himself in his own handwriting. I meant it to include all my lots, but he never would give me the lease. I paid the monthly rent that he put on my dwelling-house—all that was under fence. I told him I wanted to take a lease for the whole of it, but he did not want to give it to me, but he never leased it to anybody else. People came to me to lease from me, but I never had any transaction since, except to sell Mr. Wilson a stable. I do not know whether it was a few days before the decision of the Supreme Court or a few days afterwards. I disclaimed owing anything till the act of Congress was passed giving me a show for my possessions there.

Q. You leased your residence at first?

A. I rented it. Afterwards, as the tenants went away, some cottages that I had I offered to Mrs. S. H. Stitt and let her lease them. At the north end of the cemetery there were three cottages and 2 store-rooms, and it may have included this Surprise house. I am not sure but there were six in all. They were on the east side of the creek. I leased those; then I leased three houses to

104 Albert Gaines, Dr. Taylor's office, and the Smith house, on the west side of Valley street, the two cottages and the Cloyes house to Mrs. Williamson.

Q. What two cottages were those?

A. They were the two lying between the Malvern road and Hot Springs creek, opposite the cemetery. Those cottages Mrs. Williamson, my daughter, leased, at my request, from the receiver. They were given to her. I bought a little shanty that was back of the Burch house; that was his own transaction. I think he leased that from the receiver.

Q. You say you have filed in this case the transfer from the Belding heirs to yourself?

A. I will do it. I have the conveyance of recent date. One was signed in Texas and the other here. Albert Belding signed his, George signed his, and Henry signed his. It has been within the last three months.

Q. Your plat shows how far your line runs, does it?
A. Yes; it includes Wilson's stable, the Hot Springs hotel, and the barber shop this side.
Q. Did you pay any taxes on this property in your own name?
A. No, sir; in the name of the Belding heirs.

Questions by Mr. CURL, representing Sumpter, Kemper, and other claimants:

Q. State if you acquired any possession west of Hot Springs creek originally by virtue of purchase, or was it all by virtue
105 of the Beldin heirs' certificate of entry.
A. I bought the Malone house, that covered the ground where the St. Louis saloon now stands, in 1852, soon after I bought Mrs. Sabin's ground.
Q. Any others?
A. No, sir; not on that side.
Q. Then the balance of your possessions on that side were acquired by virtue of the certificate of entry of the Belding heirs?
A. No, sir. I took possession of the vacant ground and built those log cabins.
Q. My question is if the balance of the possessions you acquired on the west side of the creek were acquired by virtue of the entry of the Belding heirs.
A. Yes; except that there was a good deal of vacant ground that I took possession of there.

Re-examined by Mr. BENJAMIN:

Q. State whether some of the ground occupied by Mr. Runyon and Mrs. Beldin was not turned over to you by agreement without suit.
A. Yes; that was vacant ground. Mrs. Beldin had a house this side of the well and Runyon had a cabin south of the Kempner property there.

And further saith not.

FEBRUARY 11TH, 1878.

In the Claim of WM. H. and MARIA GAINES, No. 784—Continued.

ROBERT B. RUNYON sworn and examined.

106 Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.
A. Robert B. Runyon; age, 26, and reside at Hot Springs.
Q. How long have you resided at Hot Springs?
A. I was raised here.
Q. Are you acquainted with Wm. H. Gaines and wife?
A. Yes, sir.
Q. State whether you know anything about the possession that Lawson Runyon had upon this quarter section, where it was, and who he was.

A. He was my father; he did have possession several years ago.

Q. Where was it?

A. It was in the lower end of the valley, at the foot of what is called Gwinn hill. There is a house on that particular spot now, and, as well as I can recollect, it is fenced up.

Q. North or south of the church?

A. North of the church.

Q. Who did he turn that possession over to?

A. Mr. Gaines.

Q. Who has had possession and control of it since that time?

A. Mr. Gaines, I think—Wm. H. Gaines.

Q. You have known it all the time?

A. Yes, sir; have never known any one else owning or control-ing it.

Q. State what street it comes up to.

107 A. It comes up to the main street, Valley street, and runs up on the hill to the section line.

Q. About how many feet upon the street was it?

A. I suppose it is 60 or 75 ft.

Q. State whether Mrs. Beldin had a claim.

A. She had a claim this side of that.

Q. State whether you know of Abraham Kempner ever having any claim.

A. Yes, sir; I know of his claim there; it is adjoining that same lot and fronted on Valley street.

Q. Any house upon it?

A. Yes, sir.

Q. How far up did it run?

A. Some 100 ft., I guess.

Q. State whether you know to whom Kempner turned it over.

A. I think Mr. Gaines has had possession of it. A. I don't recollect; it was a good many years ago.

Q. And since that time he has had continuous possession?

A. Yes, sir.

Q. Do you know anything about the claim of Mrs. Beldin?

A. Yes; she had a claim right this side, commencing at the well; it fronted on the Valley street and ran back to the section line.

108 Q. How many feet in front?

A. Probably 125 ft.

Q. Who has been in possession of that claim for the last ten years?

A. William H. Gaines.

By Com. COBURN:

Q. What improvements are on it?

A. When Mrs. Belding owned it there was a frame house on it of some four rooms; the front of it was weatherboarded; there was a well between that and Kempner.

Q. Do you know anything about Mrs. Julian having any possessions on that street?

A. I recollect about the house very well; it is somewhere just below what is known as the Valley house, where Capt. Toale's office is now; was a small log cabin on it 16 by 18 ft. square. Some time afterwards Mrs. Gaines built an addition to it—another room. This was after Mr. Gaines got possession of it. He made a double log cabin of it.

Q. State whether you knew anything about Patrick Burke having any possession.

A. That is before I recollect. I know where they were.

Q. State who has been in possession, as near as you can recollect, of the ground.

A. Mr. Gaines.

Q. Any house on it?

A. Yes, sir; a great many houses on it now.

109 Q. Any there before the war?

A. Yes, sir.

Q. Who had control of those houses?

A. Major Gaines. No one else set up any ownership to them, to my knowledge.

Q. State whether you know anything about the possession of James Sumpter at one time; and, if so, where it was.

A. It was situated about opposite the lower corner of the Hot Springs hotel; on the opposite side of the street—the houses.

Q. That extended up how far?

A. As far as Dr. Hobson's office; somewhere near there.

Q. Who was above it?

A. Mr. Kempner had a store above it, and also Mr. Beldin above there.

Q. What became of the improvements on it?

A. They were burned down during the war, and have never been rebuilt since. Some few houses have been put up on it, but most of it has been vacant since.

Q. Do you recollect anything about Major Gaines being put in possession of it?

A. Yes, sir.

Q. Do you recollect whether Kempner claimed his store or Major Gaines?

A. I think they belonged to Major Gaines and was rented to Kempner. He kept store there several years.

Q. Where was George Belding's storehouse?

110 A. About where the livery stable is now; or, rather, where the St. Louis saloon is.

Q. Do you know anything about the possession of Mills and Butler?

A. Yes, sir; I recollect that the Mills store was right where the Sentinel office is—Goode's drug store.

Q. Did Mrs. Butler have any house there?

A. Her house was the next house below the printing office.

Q. Do you know anything about Major Gaines having possession there?

A. Yes, sir; he had possession there since I can first recollect.

Q. State whether he has had control and acted as owner of it since that time.

A. Yes, sir; he has.

Q. Anybody else claim to own it or control it?

A. There may be somebody who claimed it, and probably may have controlled it some.

Q. State where the Barksdale possession was.

A. That was just above the printing office, about where Wilson's stables are.

Q. State whether you know where the Switzer property was.

A. Yes, sir; right where a man by the name of Allen is living now. The house is standing yet—the back part of it.

Q. Did he have an enclosure there?

A. Yes, sir. I suppose there was a right smart enclosure
111 of some 20 ft. front; had a garden spot there; it run back to the creek.

Q. Do you know anything about Sam. and Oney Macklin having a claim?

A. Yes, sir; Oney was right where Bertsch'- saloon is now. It fronted on Main street and ran back to the creek.

Q. State whether Switzer's claim did not join Oney's claim.

A. I think it did.

Q. And extended down below?

A. Down below the Allen house.

Q. State whether you know anything about this property being enclosed between the creek and the Malvern crossing and further down to the section line at any time and being used for any purpose.

A. It was enclosed and there was a brick yard upon it at one time. It has been enclosed ever since I can first recollect. My father cultivated a portion of it himself.

Q. Who was using it afterwards as a brick yard?

A. Mr. Lecroix, but he was working for Mr. Gaines.

Q. Do you recollect anything about the possession of Sabin?

A. No, sir.

Q. Do you recollect anything about the theatre building?
112 A. Yes, sir; it was just directly below the Hot Springs house and extended down to what is known as the Cohen house now and back to the creek.

Q. State whether there was any log house there.

A. There was some log houses below there—just below where the Cohen house is now.

Q. Can you describe anything about the mill on the other side of the creek?

A. I just recollect about it.

Q. Do you know anything about what improvements were on the east side of the creek between the Malvern road and — before the war and who had possession of them?

A. There was a log cabin there belonging to Mr. Gaines, and a colored woman lived in it, right at the crossing.

Q. Any other improvements below there on the same side that you recollect of?

A. Not that I recollect of.
Q. Was there not a house that Abe Peters lived in?
A. Yes, sir; below the creek—just below the corner.
Q. Was there any fence up?
A. That lot was all fenced up.
Q. State whether you know anything about the old Sabin field and fence and where it ran.
113 A. It started from the Malvern street —, where the cemetery stands now, and ran back to near the depot.
Q. And where did it go then?
A. Then from there up to the foot of the mountain.
Q. You say it ran east to near the depot?
A. Yes, sir; and then north, or rather northeast.
Q. And ran up to what place on the mountain?
A. Up to the line.
Q. And that was all enclosed?
A. Yes, sir.
Q. And from this east side of the fence it was fenced up to the residence of Major Gaines?
A. Yes, sir.
Q. And divided up into different lots?
A. Yes, sir.
Q. Who lived there at that time where Major Gaines' old residence is?
A. He lived there.
Q. How long has he lived there?
A. Ever since I can recollect.
Q. State whether he has been the ostensible owner and had control of those premises fenced up that you have described here on the street.
A. Yes, sir; he has.

Cross-examination.

By Mr. HARRELL:

Q. What is your father's name?
A. Lawson Runyon.
114 Q. How old are you?
A. Was 26 on the 6th of January.
Q. You have known Major Gaines all that time?
A. Yes, sir.
Q. You have been living here all that time?
A. Yes, sir.
Q. And Major Gaines was the one who had possession of these improvements you have described?
A. Yes, sir.
Q. Did you ever hear of the Beldin heirs?
A. Yes, sir.
Q. What improvements did they have?
A. The same improvements.
Q. Were they Major Gaines'?

A. They belonged to the heirs.

Q. How do you know?

A. That has always been my understanding. He has always had rental of them. That was what I was alluding to.

Q. What became of these improvements?

A. They were torn down and moved away for more substantial buildings.

Q. While he had control of them?

A. I think so.

Q. Who put up the buildings on them?

A. Different parties leased the ground. He also built some.

Q. Which ones did he build and which the other parties?

A. I don't know. I never paid much attention.

115 Q. Do you know who the Belding heirs were, how many, and their names?

A. George, Albert, Henry, and Maria Gaines.

Q. Where is Albert Beldin?

A. I don't know; Henry is in Texas; it has been three years since Albert was here; Henry was here about a year ago, probably longer.

Q. George Belding lives here?

A. Yes, sir; and Mrs. Gaines.

Q. Is George Belding's name in this claim of Major Gaines'?

A. No, sir.

Q. He has a separate claim?

A. Yes, sir.

Q. Are those heirs of age?

A. Yes, sir; all of them. Albert is over 40, and I think Henry is somewhere near 40; I do not know how old George Beldin is; he must be 38 or somewhere along there.

Q. Do you know Mrs. Maria Gaines?

A. Yes, sir.

By Mr. WALSH:

Q. Can you point out to-day any of those buildings that you have described?

A. I can point where they stood.

Q. Are any of them standing?

A. The Switzer house is; it is where the Allen house is now.

Q. Do you know of your own knowledge who constructed the house?

A. I do not.

116 Q. Can you tell me of any house that Major Gaines built, of your own knowledge?

A. He built that house where the confectionery is, this side of the Hot Springs house. I recollect about his getting lumber. He also built the Hot Springs hotel.

Q. Don't you know that Mr. Stitt furnished the lumber and built it?

A. I don't know about that.

Q. Can you point out one house that Major Gaines built or paid for building?

A. I don't know any that are standing now.

Q. You stated that he was in possession of that house and lived there all the time. Is it not a fact that he lived on his farm and that other parties have had possession of the house from time to time?

A. I don't think he has entirely left his house on the hill: ever since I can recollect he has been living up there.

By Mr. CURL, as attorney for Sumpter:

Q. Were you present when those premises were turned over to Major Gaines?

A. I don't know as I was present; I recollect of my father speaking about it.

Q. When was that?

A. Seventeen years ago. I don't recollect exactly; I was small.

Q. What was there in the shape of improvements when they were turned over?

A. Some log cabins.

Q. Where did they stand?

117 A. Right north of the Methodist church.

Q. Did Mr. Kempner have a garden running down to the foot of the hill towards the Gaines house?

A. No, sir.

Q. Do you know how Mr. Gaines got possession of the Gaines house?

A. No, sir.

By Mr. BENJAMIN:

Q. You knew he had possession?

A. Yes, sir.

By Mr. CURL:

Q. Do you know when he got possession?

A. No, sir.

JACOB W. PARKER sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Jacob W. Parker; age, 70, and reside at Hot Springs.

Q. State how long you have resided here.

A. I came here the 6th of March, 1853.

Q. Are you acquainted with William H. and Maria Gaines?

A. Yes, sir.

Q. State whether you was the Jacob W. Parker that a writ was served upon for the possession of a mill and where it was.

A. I forget the writ. I know where the mill was; I gave it up.

Q. Was not a writ of possession served?

A. I suppose so; I gave it up, anyway.

118 Q. Where was the mill?

A. It stood right above the Malvern crossing; the road then crossed differently.

Q. Where Shipley's store was?

A. About the north of Shipley's store; ran right through it, I think; had a post office there. I was postmaster in the house where my son's butcher shop is—right in the fork of the road. I delivered the mail from my north window.

Q. Whose house was that?

A. I first rented it from Wm. Gardner, then Wm. H. Gaines.

Q. Gaines came in possession of it while you were there?

A. Yes, sir.

Q. About the time of the mill?

A. I don't know about that; perhaps about that time.

Q. Look at that and see if it is your lease (handing witness paper).

A. Yes, sir.

Q. What improvements were there in the forks of the road at that time?

A. There was a frame building.

Lease offered in evidence from Wm. H. Gaines to Parker, dated 8th December, 1857, and marked Exhibit No. 1.

Q. Do you know Peter Burke?

A. Yes, sir.

Q. Did he have any possessions here after you came, in 1853?

119 A. I leased from Peter Burke and Wm. Gardner, jointly. I think there was four rooms; I suppose 16 or 18 feet front. There was a yard they had fenced below that; it run down 50 or 60 ft., right south of these rooms.

By Com. COBURN:

Q. Anywhere near the Malvern crossing?

A. It is on the west side I am speaking of; it will go below the Malvern crossing now.

Q. What year?

A. Must have been in 1854 or 1855.

Q. That he was in possession?

A. I mean Burke and Gardner.

Q. When were they dispossessed?

A. It must have been in 1854 or 1855. I paid Gardner rent for a year and a half.

Q. Here is a certified copy of the writ dispossessing you.

A. Yes, sir. What is the date?

Q. It was issued on the 3rd of March, 1856.

A. I leased from Major Gaines; the date of the lease will show.

Q. This shows the date upon which this writ was served for these mills. I was trying to fix the date in your mind when Burke was put out, and whether it was about the same time.

A. I was appointed postmaster under Burke. I was his deputy

in the spring of 1854, and he went to Texas right off, and in
120 a short time I was appointed postmaster. It was about the same time, I reckon.

Q. About the same time you were put out?

A. Yes, sir.

Q. State whether you have known these premises since.

A. Certainly.

Q. Who has been in possession of them since?

A. Major Gaines.

Q. State whether Sabin had any possession on this street or no?

A. Not that I ever knew of.

Q. Do you know what became of the Burke property?

A. It was burnt up.

Q. When?

A. In 1864, I reckon; during the war; and a portion was rebuilt again, I think.

Q. You don't recollect anything about Abigail Sabin having any possessions upon this street?

A. No, sir.

Q. Do you know whether Major Gaines built any houses after he got possession of this property before the war; and, if so, where?

A. Yes, sir; built four rooms, about 16 by 18 ft., with a shed-room back; extended from what we called then the Sumpter property, and ran south; log houses.

121 By the CHAIRMAN:

Q. That was on the other side of the street?

A. West of Valley street.

Q. The Burke property that you were speaking of before is on the east side?

A. All on the west side; it was Gardner and Burke'-, but they turned it over to Major Gaines afterwards.

Q. Do you know whether Major gaines had, any time before the war, this property on the west side fenced up?

A. There was a fence on the west side on the hill, but who put it up, Major Gaines or Sumpter, I do not know.

Q. State whether you know anything about Major Gaines having the east side of the street enclosed as far down as Belding's.

A. It was enclosed, but who had it done I do not know. A man by the name of Switzer had a garden and a house, and I think he joined onto old Olney on the north.

Q. Then below that?

A. Nothing else until you come to a brick yard.

Q. Was it enclosed?

A. I think it was.

Q. Who had the brick yard?

A. Lecroix worked it. I always called it George Belding's when I came down. I never knew anybody else but he and Gaines.

Q. How long have you known this property?

A. Ever since 1853.

122 Q. State whether Major Gaines had been in possession and control of this property and leased it as the ostensible owner since he has been put in possession of it.

A. There was trouble about a portion of it—this Burke and Gardner part. Major Gaines has been in possession as far as I know; he has been the ostensible owner.

Q. And you know of no one controlling it but Major Gaines?

A. No, sir

Q. Those persons building on it built how?

A. They built upon a lease.

Q. From Major Gaines?

A. Yes, sir; but they repeatedly said he had no right and said they were not going to pay anything.

Q. But they went on there, so far as you know, under a contract or lease?

A. That is my understanding.

By Mr. WALSH:

Q. Did you ever hear of the Government owning any property down there?

A. I have heard that for four years, almost.

Q. How many houses on the reservation constructed by Major Gaines were standing on the 24th of April, 1876, that you know of?

A. I don't know of any except where he lived. He did build, but they were burnt down.

By Mr. HARROLL:

123 Q. Do you know a man by the name of Boatright who had possesion of the forks there?

A. Not in the valley; never knew him.

Q. Don't you know that Boatright has been holding possession in this fork adversely to Gaines?

A. I do not know him.

Q. Do you know J. H. Nichols?

A. I know the old sheriff.

Q. What was he before he was elected sheriff?

A. He was a blacksmith right on the place I have described.

Q. Who built that shop?

A. I think Nichols did; he claimed it; was in possession of it.

Q. When did he build it?

A. Three years ago.

Q. You were asked if the property on the west side of the creek was enclosed, and I understood you to say that you did not know whether it was or not.

A. There was a fence built by somebody. I don't know whether Mr. Sumpter claimed it as his fence or Major Gaines, or whether it was a general fence; but there was a worm fence there made of rails.

Q. And you say it enclosed some log cabins of four rooms of some 18 ft. front each; in what year?

A. They were put up in 1866.

Q. And below them what was the distance before you came
124 to vacant ground, upon which there was no house?

A. There was a space of 20 or 30 ft.; but after that Maj. Gaines put up a house adjoining the one south.

Q. From the lower side of the new house about how far was it to the next improvement?

A. It was an old house; the new house was north of the old one. Below this lot, which I leased from Gardner and Burke, Major Gaines put up on the west side three or four houses, one right after another, of the same style, below Little & Jenkins' store. If you start at Little and Jenkins' there was a post office, then two-story rooms, a ware-room, and a saloon, all covered over with the same roof.

Q. They were log cabins?

A. A frame building.

Q. In what year?

A. When I went there, in 1853.

Q. Who owned them then?

A. Burke and Gardner.

Q. How far from those houses to the next house?

A. 20 or 30 ft., and then Major Gaines put up one adjoining the house still below and left a space between the two.

By the CHAIRMAN:

Q. Whose house was that?

125 A. It was known as the Julian, but, as I understand, it was Belding's or Major Gaines'.

Q. What was the frontage of that house?

A. 16 or 18 ft.

Q. How far below that before you came to another house?

A. I cannot tell, but old Mrs. Belding lived there when I came, and lived there for years afterwards.

Q. And who owned that?

A. She, of course, owned it. She lived there, and she is the mother of the Beldin heirs.

Q. How far below her house to another house?

A. It is right where the house now stands—the adjoining house.

Q. What house is that?

A. We always called it the Kempner house.

Q. Who has the store in it?

A. Nobody; a private family is living there; just this side of the Methodist church; the first house; the house with the gallery on it.

Q. The house that you speak of as being there now——

A. That stands as it was; it stood through all the trouble.

Q. When was it built?

A. Before 1853.

Q. Is that the Kempner house?

A. Yes, sir.

126 By Mr. CURL:

Q. I understood you to say that the Burke and Gardner buildings—the upper ones of them—stood where Little and Jenkins' store is?

A. That is my judgment.

Q Do you recollect whether Mr. Sumpter had a stable in his lot that he had fenced?

A. I think he had a stable in the south end of his lot. There was a big gate that led up to his stable.

ALFRED WHITTINGTON sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Alfred Whittington; age, 34, and reside at Hot Springs.

Q. How long have you resided there?

A. Since 1851.

Q. Are you acquainted with Major Gaines?

A. Yes, sir.

Q. And Mrs. Gaines?

A. Yes, sir.

Q. Describe the improvements that were formerly known as Flowers and Barksdale.

A. They were right on the west side of Valley street, as near as I can remember, just south of the Earl house, and ran down 100 ft.—maybe more.

Q. Who had improvements immediately south of that?

A. South of that came Mills' store.

127 Q. What improvements did he have?

A. He had a storehouse on the street, and back in the yard was his residence. I think it belonged, or did afterwards, to Mrs. Butler; I don't recollect what her full name was. The house was occupied soon after the war by the old Burgamer store. It is right along where the printing office is; it takes in about that property.

Q. Do you recollect any house below Mills' claim owned by Major Gaines?

A. George Belding had a store in the next house south of Mills; it was right adjoining the Butler yard.

By Com. COBURN:

Q. This is all on the west side?

A. Yes, sir; and then right south of Beldin's storehouse I think Kempner had a store—about where the livery stable is now.

Q. Below that who occupied the ground?

A. Sumpter's ran on down below Hobson's office; the old well used to stand right in front of it.

Q. The old well is in the street now?

A. Yes, sir; it was then in the neighborhood of Hobson's office.

Q. And how far did it run down?

A. The old well was filled up. The lot extended some hundred feet further down, running towards the hill.

Q. Who was below Sumpter?

A. Just below that, on the same side of the street, was a
128 row of one-story buildings; old man Gardner and Burke had a store there; and then some distance below that house came Mrs. Julian; then the next house I remember is the Kempner house; a portion of it stands there yet.

Q. Do you recollect the Runyon house?

A. No, sir.

Q. Do you know whether Abigail Sabin had any possession above there, on the east side, at the forks of the road?

A. There was a house nearly opposite Kempner, where Switzer used to have a grocery. I never knew anything about Sabin's shop there. I never knew him at all.

Q. Where did the road cross in the forks?

A. It must have run right in where Breitie's saloon is, some 80 feet this side of the Malvern crossing. It ran through Breitie's saloon, taking in a portion of Shipley's store.

Q. State whether there was any improvements in the forks of the road.

A. There was a log house that stood there, with two rooms and a hall between and a gallery on one side. On the north side of the Malvern crossing was an old mill. The first man I recollect in that house in the forks of the road was old man Parker. Several other parties lived there afterwards; a man by the name of Davis lived there once.

Q. Do you know anything about the possession of old Oney?

129 A. Yes, sir; she had a house just below to the left, on the same side of the street. She had a little garden.

Q. Can you give the present location?

A. I should judge it to be right where Bertsch's store is; a little below, perhaps, but right in that neighborhood.

Q. Who occupied below?

A. A man by the name of Switzer had a house in there a little piece below.

Q. Do you know what became of that house?

A. No, sir.

Q. Do you know anything about a brick yard being enclosed below there?

A. Below there a house stood as long ago as 1853, which was burned; then afterwards there was a brick yard in that same enclosure.

Q. The ground was occupied and in use?

A. Yes, sir.

Q. Do you know who by?

A. I do not.

Q. Do you know anything about Major Gaines coming in possession of this property and remaining in possession?

A. Only from hearsay.

Q. Do you know of his being in possession and being the ostensible owner and control-er of it?

A. I do not know as I do, only portions of it. There are some portions that Maj. Gaines had possession of that I know.

130 Q. Do you know anything about Major Gaines having built the Hot Springs hotel?

A. To say that I know it, I do not; it is generally believed that he built it.

Q. Do you know anything about the old Sabin field?

A. Yes, sir.

Q. Can you give a description of it as to where it went?

A. It commenced at the southwest corner of the cemetery or Malvern road and ran down to about opposite or probably a little below the old city hotel, and then run back towards the depot; it then run along what is known as the Benton road, as near as I can place it, until it got up to just in back of where Carhart has a residence.

Q. State whether the ground running up towards the mountain was not fenced up.

A. Yes, sir.

Q. Who was it fenced up by?

A. Major Gaines.

Q. Who has possession of this field—the control of it?

A. After Major Gaines got possession of the old residence there I think he had from that time.

Q. When was that?

A. Some time about 1852 or 1853. I know that Mrs. Sabin lived there a long while.

Q. And Gaines has been living there ever since?

131 A. Pretty much all the time since.

Q. So far as you know he has the control of that field and all those houses?

A. Yes, sir; up to the time they were thrown out into the woods by the fences being thrown down.

Q. When were the- thrown down?

A. When the Gaines avenue was put through.

Q. Up to the time of the decree or since?

A. I don't remember whether it was just before or after. It has been the general understanding that they belonged to Major Gaines.

By Mr. HARROLL:

Q. Describe where the fence ran.

A. I could not say anything about the back fence over the hill. I never was up there; a garden was there.

Q. How far did the garden extend back?

A. It was not on Valley street; I am speaking of the Benton road. His garden fronted on the Benton road.

Q. Back of his house?

A. Yes, sir; the garden ran back from the Benton road to his house.

Q. How far from his house eastward did the garden extend?

A. I don't know as I could tell; I should judge the garden extended from the house in a southerly direction.

Q. Do you know where the line of the Hot Springs reservation is?

A. No, sir.

132 Q. Do you know whether he had any improvements in the rear of his house?

A. His stable lot ran back.

Q. How far back?

A. It ran back to opposite a little house where Irish Jimmie use to live. The road ran between Jimmie's and Major Gaines'.

Q. And took a turn toward the mountain?

A. Yes, sir.

Q. And then turned towards the depot?

A. Yes, sir.

Q. State where John Sammons' blacksmith shop was in the fork of the road.

A. John Sammons has had two or three shops.

Q. The one he sold to Nichols?

A. I don't know as he sold any to Nichols.

Q. And one he sold to Boatright?

A. I don't know as he sold any to Boatright.

Q. Where did you say Mrs. Belding lives—the old lady?

A. She lived on the hill where George Belding now lives.

Q. Lived there during the war or at the end of the war?

A. No, sir; I think she was dead before the war.

Q. Where did she live when you last knew her?

A. My impression is that she lived with Geo. Belding on the hill,

By Mr. WALSH:

Q. How many houses were on the reservation before the fire of May or June, 1864, that were built by Major Gaines, to your

133 knowledge?

A. I don't know that Major Gaines ever built a house in his life.

Q. Or knew that he had them built for his own use and benefit?

A. The one where he lives.

Q. What is it known as?

A. The Gaines cottage.

Q. Will you swear he built it?

A. He was living there.

Q. Point out one other building on the reservation before the fire that he constructed except those little cabins known as the Gaines cabins on the road as you go down.

A. I don't know that Major Gaines built any. I don't know whether those cabins are there now or not.

Q. Is it not a fact that nearly all the buildings spoken of were built by other parties?

A. No, sir; I could not say that.

Q. I will ask you how many buildings were on the reservation on the 24th of April, 1876, that were constructed for his own use and benefit.

A. I think the Hot Springs hotel.

Q. Is it not a matter of fact that Stitt furnished the material for that hotel?

A. My understanding is that Major Gaines built the house and rented it.

Q. Do you know of any other?

A. No, sir.

By Mr. BENJAMIN:

134 Q. Do you know who put up all those buildings down there?

A. No, sir.

Q. Do you know that Major Gaines was acting as agent of the Belding heirs, and did you not hear Gaines say that he was agent of the Belding heirs?

A. I never heard him say so.

JACOB W. PARKER recalled:

I desire to state that the log cabins spoken of in my testimony were built before the war—in 1858 or 1859.

ABRAHAM PETERS sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Abraham Peters; age, 45, and reside at Hot Springs.

Q. How long have you lived here?

A. 26 years.

Q. Are you acquainted with Major and Mrs. Gaines?

A. Yes, sir.

Q. State where you resided here before the war.

A. I lived with Mrs. Sabin out there at the grave-yard four years.

Q. Whereabouts is that?

A. Near 300 yards below the grave-yard. There is a two-story building there now; a kind of a yellow house; the City hotel.

135 Q. State whether you know anything about this Sabin field spoken of here and where the fence ran.

A. Yes, sir; Major Gaines had a garden there.

Q. Where was the garden?

A. On the right-hand side of the road. I think it ran down about 250 yards, on the same side of the grave-yard.

Q. Who fenced on the other side of the Benton road towards the mountain?

A. Major Gaines did.

Q. You have heard him testify in regard to these old improvements and where they were situated. Is that testimony substantially correct according to your recollection?

A. About the log buildings?

Q. Yes, sir.

A. Yes, sir.

Q. On Valley street?

A. On the right-hand side.

Q. Who had control of those buildings?

A. Major Gaines.

Q. Do you know how long he has had control of this property?
A. He built them before the war.
Q. And has had control ever since the war?
A. Yes, sir. He has been renting them out or occupying them since.
Q. All this ground from Barksdale down?
A. Mr. Sumpter came in there.
Q. Below how is it?
A. Suppose all below was under his control, as well as I can recollect—all below Sumpter.
136 Q. And no one else?
A. No, sir.
Q. How about the east side of the street?
A. At that time there was a vacant space there; I don't believe there was any building on it next to the corner road where you go across the street.
Q. How about below?
A. Below this was the Sammons blacksmith shop; next was Oney, and next was Mrs. Switzer. Sammons' shop was under the control of Major Gaines. I don't know whether he had anything to do with the Oney building. The brick yard below the Switzer building extended to the street.
Q. Has Major Gaines re-ided here with his family?
A. He has been here ever since I have—26 years. I used to drive his family around.
Q. His family would be here all the time?
A. Yes, sir.

By Mr. HARRALL:

Q. How do you know that Major Gaines controlled these various houses?
A. From what others said.
Q. Do you know whether Mr. Gaines sued Mr. Nichols, the blacksmith?
A. That is my recollection.

By Mr. WALSH:

Q. How many buildings do you know, of your own knowledge, that Major Gaines constructed before the fire of 1864?
137 A. Those three log buildings on the right-hand side going down.
Q. What were they known as?
A. Gaines' cabins.
Q. Do you know of any others?
A. No, sir.
Q. Is it not a fact that the Gaines residence was originally constructed by Mrs. Sabin's mother, and that he made some improvements afterwards?
A. Some portions of that house—the old building—were very common looking, and when he went there the buildings were hardly worth looking at. He fixed them up.

Q. Do you know of any building here on the 24th of April, 1876, that he constructed for his own use and benefit?

A. None except the one he lived in.

By Mr. CURL:

Q. Do you know where Mr. Smith's restaurant is, on the right-hand side of the street?

A. Yes, sir.

Q. How far above that building was Mr. Sumpter's stable?

A. On the ground where Mr. Little's store stood?

Q. How far from the street was the stable?

A. I suppose 30 yards back. At that time they hadn't fenced up in front down to the stable. I think Mr. Sumpter had, on a portion of that ground, a good fence.

HENRY BOBINSON sworn and examined.

138 Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Henry Robinson; age, 41, and reside at Hot Springs.

Q. How long have you resided at Hot Springs?

A. The best portion of my life.

Q. You have heard the testimony here in regard to the old improvements, the Sabin field, and the old fences. State whether they are correct.

A. Yes, sir.

Q. Do you know where the old mill spoken of is?

A. Yes, sir. It is filled up now. It is a little below the Hot Springs house.

Q. Do you know anything about the theatre building?

A. Major Turnbull built it.

Q. Do you know whether Major Gaines became the owner of it or not?

A. Only by hearsay. I understood that he changed it into a hotel and afterwards tore it down, and probably put some of the old lumber into the Hot Springs house.

Q. Where was it situated?

A. Just below the bridge leading to the house known as the Gaines cottage.

Q. Run down to about where?

A. Close to the Cohen house. It is above the corner of the blacksmith shop—between that lot and the creek.

Q. Do you know who has been the ostensible owner and controller of this property?

139 A. Only by hearsay. The log cabins, I suppose, Major Gaines built, because he had his hands at work on them before the war. Some of them have been torn down since the war.

By Mr. HARROLL:

Q. Do you know that Major Gaines owned any of this property described?

A. Only by hearsay.

Q. You say those log cabins have been taken down by his permission?

A. Some have been taken down since the war.

By Mr. WALSH:

Q. State of your own knowledge — any buildings erected by Major Gaines before the fire.

A. I know of those double log cabins.

Q. How many buildings were here on the 24th of April, 1876, that were erected by Major Gaines for his own use and benefit?

A. That house he lived in.

Q. Who built that?

A. He repaired it.

Q. Was it not built by Mrs. Sabin?

A. A portion of it.

Q. Do you know as to whether it is a fact that Major Gaines brought an action of ejectment against all his tenants, and then bought them out or compromised with them?

A. I don't know how he got possession.

In the Matter of the Claim of WILLIAM H. GAINES and MARIA GAINES, No. 784, Consolidated with Many Others.

140 TUESDAY, *February 12th*, 1878.

Forenoon Session.

ALBERT BELDING, being first duly sworn, testified as follows:

Questioned by M. W. BENJAMIN, in behalf of Gaines' claim:

1st Q. Look at the signature attached to this receipt and state whether you know it to be the signature of Mr. Hempstead, and whether he was acting as receiver in the land office at Washington at that time.

A. This paper I have not seen for 25 years. In December, 1851, I went to Washington, and went to the land office there and paid the receiver, B. F. Hempstead, $200 in silver for a quarter section of land embracing the Hot Springs, and he gave me a receipt for it. This is that receipt, to the best of my knowledge.

2nd Q. To whom did you deliver it?

A. To William H. Gaines.

3rd Q. Have you any claim on any of this land?

A. I am one of the heirs of Ludovicus Belding. Major Gaines represented me, with the other heirs. He named my sister.

4th Q. State whether Mrs. Gaines has been the only one of the Belding heirs that has resided continuously on this land.

A. I think so. I have no claim to this quarter section except through Gaines and wife, as the representative of the Belding heirs.

141 (NOTE.)—The above testimony is offered by the —, but the commissioners reserve all questions as to its admissibility.

JOHN H. LACROY sworn and examined.

Questioned by Mr. BENJAMIN, representing Gaines claimants:

1st Q. State your name, age, and residence.

A. John H. Lacroy; age, 40; residence, Cove Creek station, Hot Springs county.

2nd Q. Did you ever reside here?

A. Yes; I came here in 1858.

3rd Q. State whether you are acquainted with the premises then claimed by Wm. H. Gaines; and, if so, state the circumstances connected with your acquaintance with it.

A. On the west side of Valley street there was a little log house that I rented from Mr. Gaines myself and lived in it about 3 months. Right north of that he had a double log house that I rented and lived in for a year. Squire Towle is living right in front of where the little log cabin stood, and Johnson and Foreman are about where the next one was. There was another double log cabin further this way. I think Mr. Hilfridge's house is right over it. There were four log cabins. The court-house is over one of them. I built the chimneys for those houses. North of that there was a house built by Mr. Burke. I built the chimneys for Major Gaines. All
142 north of there were renters, so far as I know.

4th Q. How far north were they paying him rent?

A. As far north as Williamson's livery stable. I heard the men that lived in those houses say they were paying him rent.

5th Q. What improvements were there on the east side of the street at that time?

A. Beginning at the south, right this side of George Belding's there was a fence and some land that had been cleared up. I made brick for Major Gaines there in 1859. There was an acre on that side or over. Right north of that there was a little frame house that Mr. Second or Legarde lived in. They told me they were paying rent to Major Gaines. It was commonly known as the Sweiptzer house. The next north of that was a hotel that Bill Davis had at that time. That is standing there right under Shipley's storehouse; Major Gaines controlled that. Then 40 or 50 feet further north there was a double log house, put up at the same fall. I put the chimneys to it. Right north of that there was a theatre building, said to have been put up by Mr. Trumbull; Major Gaines controlled that, and I worked on the building for Major Gaines. I partitioned it into rooms for a hotel. That theatre stood about where Mr. Kimbell's store is. It was a very long house and a very large house,
143 from 50 to 70 feet long, with the length up and down the street. Up towards the Hot Springs hotel, on the east side of Hot Springs creek, commencing from the yard fence, he had a residence and yard fenced in, the same that is there now. There was a field cleared southeast of his, of ten of fifteen acres, that was enclosed and that was said to be his. That included the country south of the Gaines residence to a point about 40 steps below the grave-yard. The south line run towards the depot two or 300 yards. The fence run right along the road, going to Benton on the south. I think

Gerhart and Williamson are in that field now. There was no building inside of the field. A portion of that field was in cultivation. It had a good fence around it. East of the creek and west of the Malvern road there was a stable and a little cabin that Ed. Peters kept some horses in before the war. There was a garden down next to the Sabin lot that I got my clay from to make these bricks. That was a little southwest of the grave-yard. These enclosures, generally speaking, have been kept up by Major Gaines. He has gen- kept possession of them.

Cross-examined by Mr. CURL:

6th Q. In 1858, the time of which you speak, who occupied
144 the property between where the present St. Louis saloon is and where Sutton's store burnt out a short time ago on the west side of the street?

A. Mr. Sumpter—John T. Sumpter's father.

7th Q. Do you know whether Mr. Sumpter paid any rent to Major Gaines?

A. It was my understanding that he did, but I do not know personally.

8th Q. Do you recollect what improvements Mr. James Sumpter had along there?

A. He had a little hotel there and a stable and lot further down towards the Suttons. I believe he had a garden right back of the house and a little further below.

9th Q. How long was that hotel?

A. It would accommodate 15 or 20 boarders. It was one story. There was a little house standing back of the hotel, due west, for the servants.

10th Q. Do you know what building now occupies the place that Mr. Kempners occupied?

A. The El Paso sale stables does.

Re-examination.

Questions by Mr. BENJAMIN:

11th Q. The- Mr. Sumpter did not occupy that?

A. No, sir; it was below that he occupied.

Q. 12. Do you know whom Mr. Sumpter recognized as his landlord?

A. Major Gaines.

13th Q. Do you know who Mr. Kempner recognized?

—. ——.

145 WILLIAM CURL sworn and examined.

Questions by Mr. BENJAMIN, in behalf of Gaines' claim:

1st Q. State your name, age, and residence.

A. William Curl; age, 31; residence, Hot Springs.

2nd Q. Are you acquainted with Major Gaines and wife?

A. Yes, sir.

3d Q. Do you know the property they claim?

A. Some of it.

4th Q. How long have you known it?

A. I have been employed by Major Gaines in building. I was employed by him to build some rooms immediately north of and in connection with the Gaines residence. I have had some acquaintance with it for 12 years. I am a carpenter and builder. Mr. Gaines honored the orders that I gave for money for the erection of the buildings. I was in the employ of Major Gaines in erecting two storehouses, situated south of the Garland house, which he furnished the lumber, nails, and windows for. He furnished all the lumber and paid for the work. One of the cottage houses near the Malvern road—near the southwest corner of the cemetery, the west side of the Malvern road—I helped to build. Those cottages houses have four rooms each. I built them for him on what was known
146 as the lower Benton road, with four rooms in each. He furnished the materials and paid for the work. I was employed by him as foreman, and he paid the wages of the hands on my orders. I was in the employ of the contractors in the erection of the Hot Springs hotel; Major Gaines was the employer, and paid the orders given by the contractors, to my certain knowledge. I was in his employ to the erection of a little office immediately north of the Hot Springs hotel that was built for the use of and occupied by one Dr. Spence, and I know that the rooms were built by Wm. H. Gaines or under his consent and authority; that is north of the hotel. There was one right near Malvern crossing—I think probably the second building below Malvern crossing on the east side of the street—occupied by William States now as a saloon; that is on the west side of the creek and on the east side of the street. My boss, from whom I learned my trade, was employed to build that building. It was built by Major Gaines. He furnished the materials and paid the hands. It was built for a laundry house and was so used for awhile. There was another building put up down there that is known as the Texas house, that was known originally as Caver's store. I was foreman of the erection of that building,
147 and Major Gaines paid the hands. It was built for Mr. States, but the hands looked to Major Gaines for their pay and got it. It is a two-story house now; it was originally a one-story house. I think it is the first building south of Kimbell's store; it cannot be more than the second building south of there.

Here was introduced in evidence:

FEBRUARY 26TH, 1878.

Major Benjamin offers in evidence the proof of the pre-emption and application of Lydia Belding, widow of Ludovicus Belding, certified to by the clerk of the Court of Claims as being taken from the original papers placed in the office by the Secretary of the Interior, marked X Exhibit; also certificate of the receiver and register of the land office, Camden, Ark., of the application of Lydia Belding, marked Exhibit Y; also certificate from the General Land Office

that B. F. Hempstead and W. H. Ellis were land officers at Washington, Ark., in 1851 and 1852, marked Exhibit Z.

Conveyance from George Belding to William H. and Maria Gaines, dated October 20th, 1877; also deed of Henry Belding to William H. and Maria Gaines, dated on the 9th day of November, 1877; also tax receipt for taxes of 1874 on this property, in favor of the estate of Ludovicus Belding; also statement signed by
148 the clerk of Hot Springs county, showing by whom the taxes had been previously paid; all of which papers are herewith.

GEORGE BELDING sworn and examined.

Questions by Mr. BENJAMIN, representing Gaines' claim:

1st Q. State your name, age, and residence.

A. George Belding; 45 years; Hot Springs.

2 Q. How long have you lived here?

A. Since the spring of 1852, except three years during the war.

3 Q. State if you know anything about the possession of the Belding heirs, or of Major Gaines for them, and how they came into possession.

A. We came into possession of the most of it by the action of the courts, writs of possession, &c. The part that came from Mrs. Sabin was bought from her by the Major; that house occupied the ground where the St. Louis saloon is now; that house he bought of Mrs. Sabin at the same time he bought the property where his residence is, &c.

4 Q. Commence now at the south end of the tract and state what improvements were there in 1860, and who controlled them.

A. Before 1860 there had been some old cabins that may
149 have been destroyed before that time. Above the line there was a little house owned by Runyon. There was a man lived in it by the name of Weaver, in 1859 or 1860. That was just south of the Kempner house, between there and the south line of the Hot Springs quarter. He was a tenant of Runyon's, who owned the house then. The next house to that was the Kempner house, which stands there now, and is occupied by a man by the name of Oxford. Next to that was a house that presented one corner a little more to the road than the other, which was purchased by my mother from a man by the name of Williamson. That old house partly fell down, and was torn away. That was this side of the Kempner house and almost joining it. It would be about McCaffrey's, or probably a little below that. The next house was a little old log cabin that old Mrs. Julian lived in, and that was known as the Julian cabin. I knew that house as long ago as 1855 or 1856. Major Gaines got possession of that Julian cabin and built another cabin to it about the time he built the other row of cabins. He built another cabin to it, leaving a little space between, and put a chimney right in there between the two houses. About 25 feet still further north of that he built two more cabins, with a chim-
150 ney between them. He had a row of four double cabins there with shed rooms attached, and there were four rooms, I think,

to all of them. That row of cabins would extend probably 250 feet, about, above where Horton's now stands. Next above those cabins were the Burke possessions. A man by the name of George Asher sold goods there at one time, a Jew. There was quite a row of houses there. I think four or five rooms. It was quite a long row of cabins. There was a man by the name of William Hutt sold goods there afterwards. Burke and Gardner bought Hutt out, and sold goods there for a couple of years or so, and then old man Gardner's son blowed the thing up with powder and matches. That was the last that I ever knew of that house. From the big, hollow, old red oak tree that stood about the corner here (reference to plat) there was an open place that Sumpters afterwards fenced up. There was an old well that used to be there which is now in the street and filled it. It stood directly in front of Sumpter's grocery. They had a large room that did not come out flush with the street; probably 20 feet square. The fence ran diagonally back to Sumpter's house lot. Then Sumpter's building came up north. They had
151 a long row of buildings. Their dining-rooms was a long room this side of the grocery house. I do not know how many rooms they had there, but probably about five rooms. They extended up to where Kempner sold goods. They had a garden enclosed back of that. It was of the length of that row of buildings and extended probably further. Mr. Kempner had a long store-room and probably two other rooms south of that that he used as a warehouse, that joined onto the Sumpter building. Then above that—north of that—was the storehouse that I occupied. That was about 24 feet long, and presented the side to the street, as all the houses did at that time. The St. Louis saloon now occupies the same grounds. The livery stable stands right on the ground where Kempner was, or at least a portion of it. I am not sure but the old house would run a little south of that. Still north of my storehouse there was a yard with a little dwelling-house standing back from the road that Mrs. Butler used as a residence and afterwards sold to Mills. Right north of that on the street was a little storehouse that presented the end to the road, that Mills occupied. Right north of that again was a little row of one-story buildings occupied by Barksdale and at one time
152 by Flowers. Right in front of the Wilson livery stables (the street was very narrow till after the war) was a little house that was used as a bar-room by Barksdale and other parties. Before Barksdale had it it was used by a man by the name of Benson. It was part of the Barksdale possessions. These are all the buildings that I know of on that side of the street. On the other side of the street, about where the Hot Springs hotel is, an old Dutchman named Sweiptzer had a grocery house. Below Sweiptzer's there was a little cabin that was used sometimes by a man by the name of Dugan, on the corner very nearly where Dr. Taylor's office is now. The theatre building was a little below the bake shop. It was built by Trunball, who failed in the business and sold the house to me and Major Gaines. It cost about $1,700. Below that were 2 or 3 log cabins that Major Gaines built, and below that was a blacksmith

shop, and below that some old houses that I have known ever since I have been at Hot Springs. They were occupied by a man by the name of Hooper. They were just above the Malvern crossing. I speak of the crossing as it was then, probably a little this side of Brighty's saloon, right above the crossing of the creek. Right diagonally across the Malvern road was an old frame house that presented the end up north. There was a little gallery next Valley
153 street, and there was another room and a little hall between. That was occupied by old man Parker some time, and the post office was in it. There was a fence around it. The well was right in front of old Ony Macklin's door, who kept and sold cakes there. She had a little yard fence- in. Below that was Mr. Sweiptzer's residence. He lived there and sold whiskey in the shop I described before. That was enclosed. Before the war there was an enclosure where Lecroy made bricks for Major Gaines. Below that there was an old shanty that McDaniel lived in and that burnt up. After that it was enclosed and a brick-kiln was put up there. Since that Major Gaines fenced that in with a good fence. I had a fence 7 or 8 feet high around my garden. My possessions extended over onto the Hot Springs quarter, and his enclosure joined onto mine. I think it was enclosed all around since the war. I do not recollect whether it was before the war or not.

5 Q. State whether before the war the ground on the west side of the creek was all enclosed.

A. I cannot recollect. There was a fence on the back side of this line of improvements built by the Sumpters, but I do not recollect about any front fence below the Burke possessions. Above
154 there was no fence, because there were buildings there, except Mr. Sumpter had built a fence from the Burke house to his. At one time they had a rail fence that ran down below this big room that I told you about, where there was a crazy man stayed, and he broke loose one day and ran with a chain fast to him and hid in one of the fence corners there, and that made me remember that the fence stood back from the road. I think after that Mr. Sumpter straightened out that fence even with the road. Their stable and horse lot sat back very nearly where the Sumpter house is now, and there was a passage-way left there to get up into the Masonic lodge-room that was up on the hill there, not far from Mr. Little's. The Sabin field there, I do not know just how it was shaped. It was quite a large field at the time Major Gaines got it. There was more than one-half of it that he cut off for her. He ran his fence right on the south line of the Hot Springs quarter from the Malvern road to the back side of her field, wherever that was, and then it extended up to the Benton road. There were two Benton roads used then, but mostly it was *but mostly* the right-hand one going from here
155 towards Benton that ran right up to the hill there. Major Gaines' fence ran right up to that. There was another road that ran where the Benton road now does. I lived there with Major Gaines, and I know that afterwards he extended that fence across that road and turned the entire travel around that crooked corner that was up there.

6 Q. State whether Major Gaines is the only one of the Belding heirs that has resided on this property continuously.

A. Yes.

7 Q. And whether with Major Gaines she has not exercised control of it.

A. With the exception of the little strip that I had down there. They are the only ones that have lived on this quarter except myself. I was the first person who took possession for him of these houses when he bought them from Mr. Sabin.

8 Q. Who has had the control and management of it?

A. Major Gaines, all the while.

9 Q. Do you know whether Mr. Sumpter leased to Major Gaines and paid him rent?

A. I do not, but I have heard that he did. I know Kempner leased a storehouse from Major Gaines and paid him $12 50 a month rent. I never saw the lease.

Cross-examined by JOHN M. HARRELL:

10th Q. Are you one of the Belding heirs?

156 A. Yes.

11 Q. Have you any interest in the prosecution of this claim by Major Gaines?

A. Not that I am aware of. I made him a deed on the 20th October, 1877.

12 Q. What was the consideration?

A. I do not know what it would amount to. I am indebted to Major Gaines or have been, and I do not know how liberal he would be if he gets this thing through.

13 Q. Will you measure his future *liability* by the past?

A. Sometimes he has been pretty liberal, and sometimes he got a little stubborn and was just the reverse.

14 Q. Do you say he has been in possession of all this property 25 years?

A. No, sir; I said the balance, except the Sabin property, he got through the courts, and I do not recollect just when the actions took place. I suppose it was about 1856, probably.

15 Q. Have you, as one of the Belding heirs, shared the income derived from the rents and profits of that property?

A. No, sir. The Major was at all the expense of conducting the suit, and he had a right to the rents.

16 Q. He never accounted to the heirs?

A. He never did to me.

17 Q. Who are the other Belding heirs?

A. His wife, Albert, and Henry M.

157 18 Q. How did he present his claim in the court?

A. In the name of the Belding heirs.

19 Q. Did he pay taxes on this property?

A. Yes; for the Belding heirs. I have seen it on the tax book taxed to the Belding heirs.

20 Q. When did he make the Sabin purchase?

A. In the spring of 1852.

21 Q. Has he been upon the land ever since?

A. I do not know that he has been on it personally. He has travelled considerably. Most of the time he had been residing there. I do not think his family have resided in Chicot county since that time only on a visit. About 1876, at one time, his niece, Mrs. White, ran that house as a boarding-house, and she and his family lived on the farm. There has been some of the family always there. They always claimed it as a home.

22 Q. Did not Major Gaines and his family reside on his place near Sulphur Springs while Mrs. White kept that boarding-house?

A. I think likely he did.

23 Q. Did they not live in Chicot county sometimes?

A. I do not think he did. I do not think he has owned that plantation for 8 or 9 years. I do not know just when he got out of the possession of it, but I guess it was when he went into bankruptcy and his creditors seized it.

158 24 Q. Did they seize his property on the reservation here?

A. I do not think they did.

25 Q. That was the property of the Belding heirs?

A. He built houses here.

26 Q. Did he claim them in his own name or that of the Belding heirs?

A. I never inquired into that. I think he paid taxes on the whole thing. He did not build them for me, and never proposed to give me anything out of them.

27 Q. Did not he live in Texas awhile?

A. I think not. He went there during the war to have his eyes operated on. His family was here most of the time, and I guess all the time. He was in Texas only a short time.

28 Q. You say he obtained possession of this property by the action of the courts?

A. The most of it, not the most in bulk, but that he obtained the possession for the Belding heirs from most of the parties who had possession of it.

29 Q. Do you know where Mr. Nichols' blacksmith shop was?

A. Down there where Booth has a butcher shop, just below Shipley's store. The candy shop is in a part of it.

30 Q. Who is in possession of that?

A. I think Mr. Nichols is.

31 Q. Did Major Gaines attempt to get possession of it?

159 A. He has a lawsuit pending.

32 Q. Did you know a man by the name of Boatwright?

A. Yes; he was about the shop there with John Salmons some time.

33 Q. Do you not know that he bought Salmons out?

A. No, sir.

34 Q. You stated that Major Gaines got possession of these peices of land by the action of court. How do you know that?

A. By his taking possession at the hands of a public officer.

35 Q. Do you know whether Boatwright got possession of this property in the forks of the road?

A. I have been told so.

36 Q. How did you buy the Turnbull theatre?

A. Turnbull was several hundred dollars in my debt and I had to take the building in order to get my money. The Major and I bought together, and afterwards I sold my half to the Major and he paid me costs for it, more or less. I think the entire cost of the building was $1,700. Major Gaines cut it up into rooms, and I understood it was to be used for a boarding-house.

37 Q. Do you know whether he claimed this property in his own name or that of the Belding heirs?

160 A. In his own name, I suppose. It was personal property, and he bought of me. I did not consider that we had any title to the land. I expected at the time that he would get a title.

38 Q. Whatever became of all those old buildings that you have described?

A. I suppose they all got burnt up except some that are standing. The old grocery house that I sold goods in was moved down to the Sentinel office and is in the rear of a part of the house, and the old Butler residence is in the rear of a part of that Job Ward building, very close to the St. Louis saloon, on the north side. I do not believe there are any more standing on the west side till you get to the Kimball house. That is standing. On the other side the old Sweiptzer house is standing in the rear of a part of the Allen house now. There are some cabins there that the Major had, south of the theatre building, which was occupied since the war by a man by the name of Vose as a bakery and afterwards by Bush. That is all I know of unless there are some old log cabins across the creek there that a man by the name of Puckett had. On the east side of the creek there is not a vestige of a house on the Sabin place that was there when I first came here. The log kitchen that is

161 there was built afterwards. His dwelling was built entirely new. The old house was torn away.

39 Q. How far east did the south fence go?

A. It went past the colored church and to the turn of the hill, but not down the hill to the other side.

40 Q. Did the fence on the east side of that lot run south to Gerhart's house, where he lives now?

A. I think it did. It turned and went right up the hill.

41 Q. There was no Gaines avenue there then?

A. No; there were two Benton roads, and the main travel ran along by Major Gaines' fence.

42 Q. Had Major Gaines a power of attorney from the Belding heirs?

A. I think he had.

43 Q. Do you know the terms of it?

A. No, sir; I was a minor then and did not execute it.

44 Q. Was there a power of attorney executed here lately?

A. Yes; three or four years ago. I signed it.

Cross-examined by B. F. RICE, counsel for J. D. Chidester:

45 Q. You say Kempner occupied the grounds covered by the El Paso stable?

A. Yes; there was a row of cabins that extended along the road, and he occupied these. I do not think he occupied the
162 back part of the ground.

46 Q. When was it those cabins were there?

A. I do not recollect when they were built, but I sold goods there in the fall of 1853 and up to the time of the war. They were said to have been burnt down during the war.

47 Q. What building was erected next on that ground where the stable now is?

A. I do not know of any but the stable. It was the next erected.

Questions by B. F. RICE, as attorney for Hot Springs R. R.:

48 Q. Was the Sabin property that Major Gaines bought, the most of it, south of Gaines avenue?

A. I do not think it was.

49 Q. Was the field south of the Gaines avenue enclosed by itself separately?

A. Yes; and it took in the cemetery. He ran the division fence between him and Mrs. Sabin that ran by the road, and he had a garden patch on one side of the fence and she had one on the other side.

50 Q. Where were the Sabin houses?

A. Right where his residence is now. They were in an enclosure by themselves, not in the same enclosure with the field. There was a road between run-ing down to the Malvern road. He had
163 a garden and horse lot and stable on the hill close to where the Episcopal church is. East of where his residence is he had a horse lot. There was a cross-fence between it and the house. There were several enclosures running east of the house. They were not in the same enclosure with the field; there was a road between.

Questions by JOHN M. HARRELL:

51 Q. Did you execute that deed on the date written in it?

A. Yes.

52 Q. You and your wife executed it on the 10th October, 1877?

A. Yes; that is her handwriting.

Questions by A. CURL, for Abraham Kempner:

53 Q. You said something about a cottage house occupied by Mr. Kempner near the south line of this claim, on the west side of the street.

A. Yes.

54 Q. Who built that house there?

A. I do not know who built the first building that was put there. I know Kempner had a log house built in the rear of the other for a kitchen.

55 Q. Was it as long ago as 1852 or 1853?

A. No, sir.

56 Q. What other improvements were there when you first knew the premises?

164 A. I never noticed anything but a little row of frame houses and probably an enclosure. There was a well at this end of the house.

57 Q. How long did Kempner live there?

A. Up to 1861 or 1862, after the breaking out of the war.

58 Q. Are the same buildings that were there when you first knew the place there now?

A. Yes; the same houses, and probably a log house back of it

By A. CURL, as counsel for J. J. Sumpter:

59 Q. What became of the house known as the Malole house, that stood where the St. Louis saloon is?

A. I sold goods in it till the fall of 1861. It was said to have been burnt down during the war. I removed to Saline county in the fall of 1861. I came here on the 3rd of March, 1863, and remained until the fall of 1863, and then went to Texas, and came back on the 10 of December, 1865. I had the house built that is there now myself in 1867.

60 Q. Do you know who built the storehouse occupied by Kempner, north of Sumpter's hotel?

A. No, sir; the first I ever knew of them there was a little log grocery somewhere about there. When I moved here in 1852 they were there and Kempner was doing business there then.

165 61 Q. Do you know when Mr. Sumpter first came into possession of the hotel property?

A. No; I recollect of seeing the old man Sumpter when he came here. I recollect of his family being here in 1847. I left his family in possession of that house when I went to Texas. James Sumpter himself was dead then; he died in the summer of 1861.

62 Q. You speak of hearing some of them say something about a contract between Gaines and Sumpter. What was your understanding of that contract?

A. My understanding was that Mr. Sumpter paid Major Gaines a consideration for the rent of the house, simply sufficient to show that he acknowledged him as his landlord. I believe it was a dollar a month.

63 Q. Did you understand that in the event that the Belding heirs failed to secure a patent under their certificate of entry Mr. Sumpter was to remain there as a squatter?

A. No, sir; I never had any understanding of the kind.

64 Q. Do you recollect the fence that ran along the north side of the Sumpter possessions before the war?

A. Yes; there was a picket fence there that ran west some distance. There was a considerable enclosure back there; they had a vegetable garden in it.

65 Q. Was there a vegetable garden in the rear of where the stage stable now stands?

166 A. Yes; it ran all along there.

66 Q. Does not the stable occupy a part of the ground occupied by that garden?

A. I think it would; it reaches back a considerable distance.

67 Q. Is the street wider now than it was then?

A. Considerably.

68 Q. What building now stands where the north room belonging to Mrs. Burke originally stood, on the west side of the street?

A. I think it was along where the Little and Jenkins building was.

69 Q. You said something about a passage-way going back to where the Masonic lodge met.

A. Yes.

70 Q. Going back there, did not parties pass through this large gate you speak of?

A. I think Mr. Sumpter fenced that off. I think there was a big gate there.

Questions by MURPHY and WARD, in behalf of Benj. W. Goode, Adams, Sumpter, Vaughan, and other claimants:

71 Q. Who built the house that you have spoken of as being on the land in 1860?

A. I do not know that I can state as to all. The log cabin that I spoke of, on both sides of the street, Major Gaines built.

72 Q. Did the Belding heirs build any of them?

A. No, sir.

73 Q. How many of them did Major Gaines build?

167 A. There were three double cabins he built, and he built one cabin up to another one that was there.

74 Q. Did he build one-half of the houses that were there in 1860?

A. Less than one-half of them.

75 Q. When did he get possession of those houses under the order of court?

A. About 1856.

76 Q. The houses were built at that time and parties living in them?

A. Yes; in some of them.

77 Q. How many of those houses did he or the Belding heirs or all of them together buy?

A. I do not know of any being bought except what was bought from Mrs. Sabin.

Questions by JOHN M. HARRELL:

78 Q. Have you the written agreement referred to in this deed?

A. Yes; at home.

Questions by W. P. WALSH, appearing for 31 claimants:

79 Q. You are a brother-in-law of Major Gaines?

A. Yes, sir.

80 Q. State how much property was on the Hot Springs reserva-

tion after the fire of 1864 constructed by and for the use and benefit of Major Gaines, on the land claimed by him in his petition here, or since the war, and that he was in possession of on the 24th of April, 1876.

A. There was a row of cottages in his yard that has been
168 built since the war; then I think there was an extension up the mountain. There was the Hot Springs hotel.

81 Q. Do you know that he built that?

A. Yes; I furnished him part of the lumber that went into it.

82 Q. Who furnished the money?

A. Major Gaines.

83 Q. What did he pay for the Sabin property?

A. I understood he paid $700.

84 Q. Do you not know it was the understanding that he was to deed that property to the Sabins; that it was merely a mortgage?

A. No, sir; I do not.

85 Q. How much of this property do you get if Major Gaines succeeds?

A. I do not know how liberal he may be. I will get a small part of it. I do not know — much. I am an interested party, sir.

86 Q. Is it not a fact that Major Gaines leased this property from Sabin before he purchased it? Do you not know that?

A. No, sir; I do not know of anything of that kind. He occupied it after he bought it. I never heard of his leasing it.

CHARLES BROWN sworn and examined.

Questions by HAMILTON BENJAMIN, in behalf of Gaines *et al.*:

1s- Q. State your name, age, and residence.

A. Charles Brown; age, 59; residence, Hot Springs county.

2 Q. When did you come to Hot Springs?

169 A. In May, 1851, I came here from Chicot county. Major Gaines raised me from a ten-year-old boy. I lived with him till 1861.

3 Q. Describe this Sabin field and its fences.

A. When they measured off the land that he bought from Mrs. Sabin, Henry Belding laid the worm for the fence between, and my boy and Billy Gaines built the fence. You commence at the corner of Runyon's fence, across the creek on this side. We commenced on the west side of the creek and crossed over and went east. Jordan Flowers is living on the line now. It ran east till it got beyond Jordan Flower's, and then it turned off and ran north and south and came on Hot Springs mountain this way.

4 Q. Taking this one field, did it go to the Benton road?

A. Yes; on the south side of the Benton road he had a garden, and on the south side to the turn of the road, the curve of the road, he had three different patches—a corn patch, an oats patch, and a potato patch.

5 Q. Did it run north to the Benton road?

A. It ran north to the mountain and did not fence up the road.

This field ran north to the Benton road and then came along in front of his house. It came up the Benton road to the valley and then right down to the curve of the road and took that in.

170 On the north side of the Benton road we had a calf lot running back east about 150 yards.

6 Q. On the west side of Valley street, Major Gaines' possessions, was there a fence enclosing that before the war—the whole thing?

A. Yes; there was on the right-hand side of the street. He had us fence it up because the parties complained that they could not keep the cattle and stock out of their houses.

7 Q. Do you know anything about the house Mrs. Sabin had on the east side of the creek and west of the street, above the crossing at one time near where the old theatre was?

A. I do not remember whether she owned that or not. Gates and Montgomery occupied it.

8 Q. State whether below the crossing it was fenced up before the war—on the west side of the creek and the east side of the street.

A. Not to my recollection. There was a passway between the creek and the Major's house, lot, and garden on the east side of the creek. On the west side it was open. The brick yard was fenced up on the south side of the road.

9 Q. State if you know of Mrs. Gaines in 1865 fencing up the lot opposite the Hot Springs hotel.

A. Yes; she had Wesley Matthews to lay the worm in April, 1865, and we picked rails from across the creek and put up the fence.

171 10 Q. How much was fenced up?

A. I cannot say how much, but there was a pretty good scope that is now idle; mighty near every bit of that ground that is in front—that is in front of the Sumpter house.

11 Q. How long was that fence there?

A. It was there in 1866; some of it—part of the south line.

Questions by JOHN M. HARRELL:

12 Q. Did you belong to Major Gaines before the war?

A. Yes, sir; I had been out of his employment ever since January, 1866. I live on the Malvern road, about a mile from his farm.

13 Q. How far was that horse-lot fence from the house?

A. There was a big road between the calf lot and the horse-lot gate and the house.

14 Q. His east fence was how far from the house?

A. About 150 yards.

Questions by Mr. WALSH:

15 Q. What use did they make of this ground after they fenced it?

A. He kept calves in there and raised potatoes. I did not work for him, though, in 1865. That was before the war. Mrs. Gaines put it there in 1865 for a garden, but she did not put it to any use.

Questions by A. CURL, as attorney for John T. Sumpter:

172 16th Q. What sort of a fence was it she had put around the Sumpter lot in 1865?

A. A rail fence 8 or 9 rails high.

17 Q. Did you see it put there?

A. I saw it afterwards. It was burnt down, and I went along where it had been and picked up the rails.

18 Q. How do you know Mrs. Gaines built it?

A. There was nobody else to build it, and she told me she built it. There was nobody here but a few old women and Dr. Colten (or Golden) and Mr. Davis.

19 Q. When did the balance of that fence leave there?

A. I do not know.

By Commissioner COBURN:

20 Q. Who cultivated that garden?

A. No person at all. It was used in old man Sumpter's lifetime as a garden and horse lot. The parties came in afterwards that are on it now, and they did not fence it. They came in in the fall of 1865. There was no house there. They lived at Willoughby's place, and they came there to build.

11 Q. Who did?

A. Mr. Sumpter.

12 Q. Did they take possession of that lot in 1865?

A. Yes, sir.

13 Q. Was the fence standing when Mr. Sumpter returned and took possession?

A. Part of it was on the south.

173 15 Q. You are certain that Mrs. Gaines did not use it after it was fenced up?

A. She did not plant a seed in there. My boy owns that. He put that fence there; him and Billy Gaines.

JOE CRITCHER sworn and examined.

Questions by Mr. BENJAMIN, for Wm. H. and Maria Gaines:

1 Q. State your name, age, and residence.

A. Joe Critcher; age, 25; Hot Springs.

2 Q. State whether you were employed by Mrs. Gaines in 1865 to fence up the property opposite the Hot Springs hotel called the Sumpter property.

A. Yes, sir.

3 Q. State whether you made the fence.

A. I hauled the rails and Mr. Matthews put the fence up with the help of the old man's son and myself.

4 Q. Did you make a good fence?

A. Yes.

5 Q. What ground did you fence up?

A. About an acre and a half.

6 Q. Where was the south line of the fence?

A. Right in front of Major Gaines' old building, back of the Hot Springs house.

7 Q. Was there a rail fence?

A. Some rail and some plank.

Questions by Mr. CURL:

8 Q. How far back did that enclosure extend?

A. Far enough to make an acre and a half square. It was
174 either that or more. It was a good, big garden.

9 Q. What time of year was that built?

A. It was in the early winter.

10 Q. How old were you then?

A. About 18 or 20.

11 Q. Was that while the war was going on?

A. The fence was there when Mr. Sumpter got home from Texas, and when he got back he took possession. It was built before anybody got back from Texas.

12 Q. Who told you the fence was there when Mr. Sumpter returned?

A. I know it was there. He had to tear some of it down before he could get it fixed like he wanted it. I saw the fence pulled down.

13 Q. Who told you it was in 1865 that fence was built?

A. As a matter of course I knew about the time the fence was built.

14 Q. What year of our Lord is this?

A. This is 1868—no; 1878, I mean.

15 Q. How were the planks put up on that fence?

A. Some of them were nailed to a kind of posts set in the ground.

16 Q. How did Mrs. Gaines use that lot after it was fenced?

A. She did not use it, because her stock died before she got to use it. They did not raise anything in there.

175 ELIJAH HARRIS sworn and examined.

Questions by Mr. BENJAMIN, for Wm. H. and Maria Gaines:

1 Q. State your name, age, and residence.

A. Elijah Harris; age, 48; Hot Springs.

2 Q. State whether in 1874 you were employed to build some fence for Major Gaines.

A. Yes; I built some fence running very close to the old stable, on the Benton road, and running from there half a mile, to where old man Jimmy lives, close to the depot. We came up from the mountain to the Hot Spring house and closed it, and just the same way on the other side. We enclosed the Baptist church. I guess we enclosed about 50 or 60 acres; it may have been over. We enclosed it with a good, substantial fence of posts and planks. He hired a fellow to keep the fence up for near two months; when he quit keeping the fence up people tore the planks off. I suppose there is some of it there yet. It stood along the road there as an enclosure for a year or better.

Cross-examined by JOHN M. HARRELL, for James O. Ducker:

3 Q. What time in 1874 was it you ran than fence?

A. The last days of December and first of January.

176 4 Q. When you were building that fence back of Jimmy's, on the side of the hill, did you not fence between some buildings started on the left and north to the Benton road, between Ducker's office and the Benton road?

A. Yes; but there was no fence then. He had started to clear and had some lumber there, and we went and fenced right up on the mountain, and of course he was inside, and we fenced him in.

5 Q. Was he arrested and imprisoned?

A. I do not know what they did with him. I never saw him any place, only in the court-house, where he was the next week at the trial.

6 Q. What became of the lumber he hauled there?

A. I cannot say. The hands that worked with me never touched it.

7 Q. When you commenced work there did not he have his posts in the ground?

A. No, sir.

8 Q. Do you know whether he pulled down that fence in order to get his wagons through when they came with lumber?

A. I know that he had it torn down and the planks knocked off and drove through.

Questions by W. P. WALSH:

9 Q. Do you recollect when you were building this fence for Major Gaines in 1874, when you constructed it along the line where Towle and those colored people lived, it was not Sunday?

A. No, sir; it was not.

177 10 Q. Did you not work on Sunday?

A. That fence was built along there in the week.

11 Q. Did you not run the fence right through Becker, Goodman, Houseman, and Towle's yards?

A. No, sir; their houses were left outside. There was no building left on that side of the fence.

12 Q. Did you leave their well on the other side of the fence?

A. If there was any well there it was not finished; it must have been just a well started.

13 Q. Did not you and Mr. Ducker race in building that fence to see who could get through first?

A. No, sir.

14 Q. His fence was inside of yours six feet?

A. I do not know the distance. He had no fence there when we built ours.

15 Q. Did he have any fence there at all?

A. No, sir; he was just fixing to build a fence. He was getting his poles, and his hands were starting to dig the holes. They had their picks and spades there. They began to dig holes for the posts and we got by there and they stopped.

16 Q. How many holes did they dig?

A. I do not know. The place that they started to enclose in was not more than twice as big as this house.

And further the witness saith not.

178 FEBRUARY 12TH, 1878.

In the Claim of WM. H. and MARIA GAINES, No. 784—Continued.

NATHAN H. CLOYES sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Nathan H. Cloyes; age, 50, and reside here.

Q. Look at that paper and see if it was given by you.

A. Yes, sir; Mr. Curl wrote it and I signed it. I sold the improvements stated there.

Q. It says all improvements, including the residence. Where is that?

A. Where the street starts out below the grave-yard, on the west side of the Malvern road. All the improvements stated are upon the ground. I made 2,000 brick there; had it all enclosed.

Q. Do you—who built the fence that enclosed that lot right north of the church or adjoining the Methodist church?

A. I put the lumber there and had it built for Major Gaines.

Q. Before or since the decree?

A. Before; right after I built the church.

Q. Do you know anything about the fences that Major Gaines had around the Sabin field and whether they were kept up until after the decree?

A. Yes, sir; parties kept pulling it down all the time.

Q. Did they keep repairing it?

179 A. Yes, sir; for two years. I hauled plank several times for Major Gaines to put it up. I cultivated it for two or three years myself.

Q. You were here in 1865?

A. Yes, sir.

Q. State whether you know anything about a fence built on what is commonly known as the Sumpter possession.

A. There was a fence built there. It was understood that she fenced it. The stable was not there then.

Q. Who occupies it now?

A. It is right in front of the Sumpter house.

Q. All that property in front of the Sumpter house?

A. Yes, sir; where Hobson's office is, and runs back to the Sumpter house.

Q. Do you know what became of that fence?

A. A portion of it was torn down. It was broken down there when they were building the stable. They kept the fence up there as well as they could. It was a general camping place. In 1870 a new fence was put up there entirely.

Q. Who put that there?

A. Billy Sumpter was bossing it; had some hands to do it.

Q. And they were armed with shotguns?

A. Yes, sir; the parties working there were armed. They built the fence clear down to Sammons' property, right where the Methodist church stands.

180 Q. On the front or back?

A. All on the front. They went down the front until they came to what is called the Smokey road and went up the hill there. Dr. Hobson afterwards built a dwelling-house right upon the edge of the fence.

Cross-examination by Mr. HARRELL:

Q. When speaking of the fence, which you say you repaired and cultivated the ground within it, to which did you refer?

A. I refer to the old field fences. It did enclose some wood lands. It did not go on the mountain there.

By Mr. WALSH:

Q. You spoke of a stable in your testimony. To what do you refer?

A. Chidester stable.

Q. Do you state as a fact that this fence referred to in your testimony was torn down to construct that stable?

A. I didn't pull it down.

Q. Do you know whether there was a fence there when that stable was constructed, to your own knowledge?

A. I don't know as there was a fence there right at the time of the building of the stable, but just before the building.

Q. How long before?

A. Three months.

Q. You spoke of a fence being built there in 1865. What time?

181 A. During the spring of 1865.

Q. What sort of a fence?

A. Plank fence.

Q. Any part of it rail?

A. Some along in front.

Q. How far back west from the street was the enclosure from the present street?

A. It rather come out in the street.

Q. Then how far east from the mountain?

A. I could not tell you; there was a fence behind Belding's store, and that fence went back to the old Sumpter garden and the quarter-section line.

Q. Was Belding's store standing there then?

A. Yes, sir.

Q. You said something about Dr. Hobson building a residence.

A. Yes, sir.

Q. Whereabouts?

A. Built immediately west of the South End drug store; maybe a little north.

Q. Do you know who lives there now?

A. No, sir; I do not.

Q. Was it within the Sumpter enclosure?

A. Yes, sir; inside of it.

Q. When was it built?

A. I do not recollect exactly the day; I know I delivered some lumber there and some brick.

Q. Is it not a fact that Sumpter built a house there in 1871 and rented it to Dr. Hobson, and he put an addition there?

182 A. I don't know but what there was a little building there called Dr. Hobson's; he was the only one occupying it as a residence that I know of.

Q. Do you know whether Belding had a storehouse there in 1865 or not, at the time you say this fence was built?

A. There was an old storehouse there.

Q. Do you know how long the fence remained there that Mrs. Gaines built?

A. No, sir; it was put up and torn down frequently.

Q. Did you live here regularly in 1865?

A. No, sir; I lived here six months in 1864.

Q. You said something of men being armed. Where was Sumpter? Where was the gun?

A. Sitting up against the fence.

Q. Do you know what he was doing with it?

A. No more than that he had men with him.

By Com. COBURN:

Q. How many did you see with arms?

A. But one.

Q. Who had that?

A. William Sumpter.

Q. Was that gun used in the frightening of any one?

A. He did not make any threats at all; he set the gun down by the posts and told them to go ahead and put up the fence.

Q. Some one was with him?

A. The men were already there; he had three or four hands to work on the fence; they commenced in the night and it was finished that morning.

183 Q. Any altercation at all between him and any one?

A. No, sir.

Q. Any opposition to the building of it?

A. No, sir; I did not see any opposition at that time.

Q. Mr. Sumpter set the gun down before the hands went to work?

A. Some of them were working; nobody interfered with him.

Q. How long did he stay there with the gun?

A. He seemed to be protecting the hands. He was not there more than two hours and a half getting the fence completed. He was there all the time. The last time I saw him he was going below, down towards the Methodist church, putting up the fence.

Q. You said the fence was commenced at night. How do you know that?

A. I was in town, at Ellsworth, the evening before, and the new posts were not set then, but the next morning they were there and nailing the fence to them.

Q. Did you see anybody at work on it that night?

A. No, sir.

By Mr. RICE:

Q. Where did that fence commence on the north?

A. Adjoining Chidester's stable.

Q. Southwest corner of the stable?

A. Yes, sir.

184 Q. It did not enclose it?

A. No, sir.

By Mr. WALSH:

Q. You acted as agent of Major Gaines for several years?

A. Yes, sir; nearly two years; use to rent some houses and collect the rents.

Q. What was Major Gaines' revenue a year—how many thousand dollars?

A. I do not know.

Q. How much did you collect as agent for a year?

A. I could not tell.

Q. Ten thousand a year?

A. I don't think it was.

SAMUEL H. STITT sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Samuel H. Stitt; age, 34, and reside at Hot Springs.

Q. Are you acquainted with William H. and Maria Gaines?

A. Yes, sir.

Q. State when you came to Hot Springs to reside.

A. In 1870.

Q. What business did you follow at that time?

A. Hotel-keeping. I opened the Hot Springs hotel.

Q. State whether you know anything about Sumpter and others fencing in the ground in front of that hotel in 1870 and how they done it.

185 A. I remember that a fence was put along in front or a little below the Hot Springs hotel.

Q. Who was engaged in it?

A. I remember that there was considerable talk at the manner the fence was put up; some excitement there, and parties were standing around armed.

Q. What were they armed with?

A. Shotguns.

Q. Who had them, according to your best recollection?

A. As far as I can remember, they were Mr. Sumpter, his brothe Mr. Daniels, William and George Sumpter. I don't know that the were all armed, but I remember there were two or three shotgun on the ground, and considerable comment was made of it by th visitors of the hotel, who had collected on the porch. Major Gain started to go over, and I rather think his family tried to prevent h going; but he went over, and there was some little apprehensio about his safety.

Q. Did they remain armed until the workmen built the fence?

A. As far as I can remember, they did.

Q. Was there any fence there previous to that time, in 1870?

A. I can remember part of an old fence down at the southea corner of that lot.

Q. But no enclosure?

186 A. A remnant of a fence there—a skeleton of a fence.

Cross-examination by Mr. HARRELL:

Q. Who built the Hot Springs hotel?

A. Mrs. Gaines and Mr. Gaines. I furnished the house and ru it on a partnership.

Q. What did it cost?

A. I do not remember exactly. When we opened it the hotel wa not completed; considerable repairs were put on afterwards; it wa plastered afterwards and an addition put on.

Q. Do you know whether there was any money borrowed from lawyer in Memphis to build it?

A. I don't think there was.

By Mr. RICE, as attorney for Hobson:

Q. Was not that vacant ground from Chidester's stable down t where the stores are at present?

A. As far as I can recollect, it was open along there.

Q. Including Hobson's office, was not that all vacant in 1870?

A. As far as I can recollect, it was.

Q. Enclosed in any other way except the one just described?

A. I don't know as it was.

By Mr. CURL:

Q. Do you remember who the parties were that had arms?

A. I cannot remember exactly who they were.

187 Q. Were there many of them?

A. No.

Q. Was anybody opposing the construction of the fence?

A. Not that I know of.

Q. Do you know when that fence was built?

A. I do not remember the time of day; it seems to me when I sav this scene it was in the morning.

Q. Were you here in 1874?

A. Not all of the year.

Q. Do you know anything of Mr. Sumpter's building a fence there in 1874?

A. No, sir; I was in Washington in 1874.
Q. What is the relation existing between you and Major Gaines?
A. Friendly.
Q. Are you not the son-in-law of Mr. Gaines?
A. I am.

HIRAM IRWIN sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.
A. Hiram Irwin; age, 63, and reside at Hot Springs.
Q. Do you know whether there was a fence in 1865 built on the ground opposite the Hot Springs hotel; and, if so, who built it?
A. No, sir; I do not recollect. I recollect seeing a fence there distinctly after the war, but I do not know who built it.

188 Mr. Benjamin offers in evidence the pleadings in the case of Gaines and the Belding heirs against Wm. and Elizabeth Sumpter, filed January, 1866; also a writ of possession for the property commonly known here as the Sumpter property, and the return of the sheriff putting Gaines in possession under *mean* process.

WILLIAM H. GAINES sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.
A. Wm. H. Gaines; age, 80, and reside at Hot Springs.
Q. State whether you ever made a lease in writing with James Sumpter or not.
A. I did.
Q. State what has become of that lease.
A. I have searched everywhere for it.
Q. Have you any copies?
A. There was in a good many cases.
Q. Look at that and see if it is a copy.
A. I presume it is; they were all copied by a man by the name of Knight at Little Rock correctly, and some filed in court and proved.
Q. You are satisfied this is a correct copy?
A. Yes, sir; have had it read to me several times.

Copy of lease offered in evidence and marked Exhibit No. —.

Q. Was the store and three rooms that were reserved in this lease a part of the possession that you recovered by the writ of
189 possession and ejectment suit from Sumpter?
A. Yes, sir; leased them on the same day.
Q. To whom?
A. Kempner.
Q. Look at that and see if it is the lease you made.
A. It has been read to me. I know it is the lease.

Articles of agreement between Wm. H. Gaines and Kempner offered in evidence and marked Exhibit No. —.

Q. State what you know of this property being fenced up after the war by Mrs. Gaines and what occurred afterwards.

A. I got home on the 18th of May, 1865. That ground was fenced up partly with plank and rails in front of the Sumpter house. The Sumpter family had left here in 1864. My considering it her possession, and wanting to make a garden, had it fenced along there and it remained so for some time. After the Sumpter family came back they wanted to build in front. I objected to them doing it; they built back, then. How long the fence remained am not able to say, perhaps a year or two. Sumpter had taken possession; he tore down the fence passing through and used some of the rails elsewhere. My lawyer advised me to bring suit, which I did; they put
— the suits a long time and Judge Watkins, my lawyer, made
190 a proposition to Sumpter's lawyer to just pass them over without trying them, and I agreed to it. I think several courts were just passed in that way by an agreement of counsel. When the hotel was built the ground there became more valuable in 1870 or 1871, and one morning I found that Sumpters had been at work and put a fence along there. My people insisted that I should not go over there. I told them I should certainly go, as I had no fear. I went over there and had a few words with them and told them they were acting contrary to law and order and to stop fencing up the ground, and they said they would do it. They continued to fence it up and took in a good deal of ground in back, run it along down the street on the ground that I had been put in possession of by the sheriff in the suits brought after the courts gave me judgment against parties. They fenced up a great deal of ground they never had in possession and run a fence down off the mountain, fencing in my improvements. I paid no attention to it and just let them go on.

Q. Any of them armed?

A. I think they were all armed. I remonstrated against their acting in violation of law and order and that I was legally in possession of it.

By Mr. CURL:

Q. This lease that you showed here was executed at the time it bears date?

191 A. Yes, sir.

Q. How long after you got judgment against Sumpter?

A. Pretty soon afterwards.

Q. Was the suit based upon the certificate of entry of the Belding heirs?

A. Yes, sir.

Q. State if there was not an agreement between you and Mr. Sumpter before the trial of that case in February, 1856, by which Mr. Sumpter was not to answer in that suit and let judgment *nil dicit* go against him.

A. I think not.

Q. Was there not an agreement between you and he that he was to take these lands and remain in possession until the question of the right to the property was settled, or rather the right of the Belding heirs was determined, and in the event the Belding heirs did not obtain the right of entry he was to remain in possession?

A. No, sir; I got judgment against Sumpter for back rent. I did not want his money. I was only fighting for the land, and told him that he could remain there at a nominal price; told him he could give me these three houses for my own use, and that I would lease him all the balance and his bath-house. He told me
192 he would agree to it when he came home, but it was after the judgment. The judgments were all got at the same court, and the compromise was made in the presence of Sharp and Stedham, who drew the lease.

Q. Were you put in actual possession by the sheriff?

A. Yes, sir; did not put out Mr. Sumpter because he agreed to the compromise and signed the lease the same day. I leased to Kempner three rooms at $12 a month.

Q. Was this arrangement made at the time or previous to the time that the sheriff came with the writ of execution?

A. Yes, sir; he returned the execution satisfied.

Q. Did you build any house upon that land at that time?

A. No, sir.

Q. What title had you to the ground?

A. An occupant's title under the last act of Congress.

Q. At the time you say you made this lease, was it the time you brought the suit?

A. Yes, sir.

Q. What was your evidence of title at that time?

A. The suit shows that. The evidence of title was the certificate of entry and the purchase-money, and that was fully sustained by the courts and confirmed by the Supreme Court of the United States.

193 Q. Didn't you get that certificate of entry by representing to the departments at Washington that you simply wanted to get it to give you a standing in court?

A. I did not; my attorney may have done so.

By Mr. MURPHY:

Q. Did you not apply to the land office at Washington, Arkansas, first to enter this land—this quarter section?

A. I did not; Mrs. Belding had, long before I knew her.

Q. Did you afterwards apply, either in person or by attorney, at the land office at Washington, Arkansas, to get a certificate upon which you sued Sumpter?

A. No, sir; I applied to the Secretary of the Interior to refer the claim of the Belding heirs as filed there in the office back for reproof, all of which is here before the commission.

Q. Do you not know that your certificate was issued or ordered to be issued upon the representation made by yourself or your counsel

to the department that you merely wanted — to give you a standing in court, and not with the expectation of getting a patent upon it?

A. I do not know that there was any such thing.

Q. Was that your understanding?

A. I know I would never have any such thing.

194 Q. You don't know there was any such representation made to any of the departments to that effect or not?

A. I think it is possible my attorney, A. H. Mills, may have made application; I do not know it.

Q. Which one of the parties had the gun when they were fencing?

A. I would not be positive as to which one; I was too blind.

Q. Can you state that the fence you understood your wife to build enclosed that ground completely?

A. Yes, sir; the bulk of it.

Q. It made an enclosure around part of it?

A. Yes, sir; it was so when I got home the 18th of May.

Q. Was it the understanding between you and James Sumpter prior to or at the time of the execution of that lease that if that arrangement was made he should be left to remain in possession at a nominal rent until the question as to whether the Belding heirs would get a title should be settled; and if not settled favorably to them, was it not the understanding that then your rights as nominal landlord should cease and he should remain in possession without any reference to you or your rights?

A. Had no bargain of that sort.

195 Q. Was that the understanding between you?

A. I frequently said I should not claim anything; there was no particular understanding.

Q. Did you, in this city, or have you not in this place, frequently said since the war to John and William Sumpter that you made no claim to that land unless your title, or the title of the Belding heirs, should be sustained?

A. I do not think I had had any special contract of any sort.

Q. Have you made statements to them to that effect?

A. I claim the land under the laws of the country, and am entitled to it now. I made no claim to anything after the court decided against me. I disclaimed owning anything or having a transaction with anybody, buying or selling, until Congress passed the land law, which, I think, gives me a perfect right to the property. I do not say I am entitled to it. If I am entitled to it under the law of the country of possession and occupancy, I am the largest occupant. I have spent four times as much money on the property as anybody else, built more houses, and brought the property up into notice.

Q. Have you not in this city since the war talked to Wm.

196 and John Sumpter, the adverse petitioners, frequently about this matter, and have you not told them in these conversations that you had no claims against them whatever in reference to the land unless your pre-emption certificates should be sustained?

A. I am claiming——

Q. I am not asking you how you are claiming. Have you made such statements as those?

A. I think likely I have made such statements. I made no such bargains with any one.

By Mr. RICE, attorney for Mr. Hobson:

Q. Since 1867 has there been any improvements on that piece of ground fronting the Hot Springs hotel, that was enclosed by your wife, except the fence that you have described that the Sumpters put up?

A. I think the fence that my wife put up there covered that very ground.

Q. In 1867, after that fence was away?

A. Is that the date of the lease to Chidester?

Q. The lease to Chidester? I am speaking of the ground south of Chidester's stable, including Dr. Hobson's office, and that vacant ground below there. Was there any buildings on that ground, any improvement except the fence that your wife built and was taken away, and since that, except the fence built in 1870 by the Sumpters?

197 —. Not by the Sumpters. There was a house built there adjoining the stable and Dr. Hobson's office.

Q. When were they built?

A. I cannot tell exactly.

Q. Before they were built was not that vacant ground, with the exception of the fence, put up in 1870?

A. Yes, sir.

Q. Had it not been vacant all the time after the time the fence was put up by your wife up to the time Dr. Hobson's office was built?

A. Yes, sir.

Q. And vacant at the time Hobson's office was built?

A. I think so.

By Mr. RICE, as attorney for Chidester:

Q. Has there been any improvements since the war in the way of buildings upon the lot of ground where the El Paso stable is now standing up to the time it was built?

A. No, sir; no improvements there when I leased the ground from Mrs. Chidester; might have been some patches of fence.

By Mr. BENJAMIN:

Q. Here is a contract between you and Walingford. Is that your signature?

A. Yes, sir.

Q. You had such a contract and it was reduced to writing?

198 A. Yes, sir; and built a house where Louis Bertsch now holds.

Q. State whether you had one with Gillis to build a stable.

A. Yes, sir.

Q. Where is that stable?

A. South of the house. Put all those buildings up and the dwelling-house at the same time, and that is where Toole and others are. Most of them are my houses, and when the receiver came they were turned over to him. They are the houses that I built.

Q. State whether you kept them up or tried to keep them up until after this decree.

A. Yes, sir; I tried all the time to keep them up.

Q. And were torn down frequently and repaired?

A. Yes, sir.

By Mr. HORRALL:

Q. Here is what purports to be a lease of a lot of ground by you to Gillis. Do you know whether or not that is the original lease?

A. I do not. I think there were two or three contracts with Gillis.

By Mr. BENJAMIN:

Q. Contract to build a stable?

A. I furnished all the lumber; had such a contract.

By Mr. HORRALL:

199 Q. Does this profess to be a lease between Wm. Gaines and Gillis for a parcel of ground situated on the east side (reading from lease)?

A. That is the ground exactly; it is the Gillis stable and dwelling-house which was cut into two apartments to rent, and the stable makes three.

Q. By what right did you assume to lease this ground—a right of yourself or as agent of the Belding heirs?

A. Myself; some of them were in the name of the Belding heirs and some in my individual name.

Q. Did you lease it as your own ground?

A. By representing the Belding heirs—being one of those heirs—and also representing Wm. Gaines individually. Where I have bought and built I have considered it my own property, not the property of the Belding heirs. These heirs will get from me all that they would be entitled to where I have got possession.

ALPHONSO CURL sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Alphonso Curl; age, 37, and reside at Hot Springs.

Q. State whether you were formerly an agent of Mr. Gaines.

A. I was the agent of Major Gaines and collected all his 200 rents in 1873 and some little time before that.

Q. Look at that lease and see if it was drawn up by you or not.

A. I wrote that lease.

HIRAM IRWIN recalled:

Q. Are you acquainted with Major Gaines and wife?

A. Yes, sir.

Q. State whether you were employed or assisted in any way in building a fence at any time for Major Gaines; and, if so, when and where.

A. I think it was about four years ago I fenced up a piece of land near where the depot now is. He came to me one day and made a proposition that we build a partition fence between us, he to furnish a part of the material and I was to do the work.

Q. Where was it?

A. It ran pretty much north and south on what was his line; it was built of cedar posts and of good planks; it ran upon the mountain, going north some 30 or 40 rods; then Major Gaines went with his hands, continued the fence up the mountain, and, I suppose, clear around. It enclosed about four acres near the depot.

By Mr. WALSH:

Q. When was this partition fence constructed?

A. About four years ago.

201 By Mr. RICE: From the point where you commenced that fence to run north, state whether there was a fence running south.

A. Yes, sir.

Q. How far this side of the depot was that fence?

A. Right near where Capt. Roe's stable now is, about forty steps this side of the depot.

By Mr. HARRALL:

Q. Do you recollect about what time it was that Major Gaines built that fence? Where did he commence it—at his house?

A. This new fence commenced, I think, at his horse lot—he had a horse lot around his stable—and went to the Benton road; then it turned and went north and then joined me.

By Com. COBURN:

Q. Was there any cleared land northeast of the horse lot?

A. I don't think there was in the piece I am speaking of now—the mountain side of the Benton road. It was just regular woods.

Q. Did you see anybody at the time Mr. Gaines was running his fence from the horse lot east attempting to put up improvements on the north side of the line?

A. I didn't see them at work, but saw plank and lumber where they said Mr. Ducker was putting up a building.

Q. Did you see anybody at work on that improvement at any time?

A. No, sir.

202 —. How much lumber did you see on the ground?

A. Really I do not know; some four of five loads.

GEORGE M. FRENCH sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. George M. French; age, 42, and reside at Hot Springs.

Q. State whether you made a survey of the Hot Springs reservation during 1875 or not.

A. I did.

Q. State the condition at that time of Major Gaines' fences and fields east of Hot Springs creek.

A. There was an old field southeast of the cemetery there and a fence along by the Malvern road, very near the township line, little north of it, but there was a fence along there that was intended to have been put upon the line and was out perhaps 1,600 feet, and was along in front of some houses built by the colored people on the hill; then there was a fence bearing to the left, running north, continuing on down, which would now be just east of the enclosure of Richard Irwin, north or west of the depot building, and joined a fence coming down on the south side of the Benton road. There was a fence on both sides of the Benton road.

Q. What fence was there on the north side of the Benton road?

203 A. There was an enclosure fence on the north side and an enclosure of a plank fence that took in the lot east of Major Nelson's place—seemed to be a horse lot—and further on was another board fence that ran up north, up the hill, as far, I should think, as the claim of Mrs. Murphy, on the side of the mountain; then followed down and included the house occupied by Mr. Davis, and came down and to the fence north of Major Gaines' residence, and joined on there.

Q. You were here when the receiver took possession?

A. Yes, sir.

Q. Do you know the condition of the fence about that time?

A. There had been an avenue opened up called the Gaines avenue; run down from the Benton road, south of the cemetery, to the depot. I mean the Malvern road.

By Mr. WALSH:

Q. What buildings were in the enclosure at that time?

A. A good many.

Q. Did you trace the lines?

A. Yes, sir; I traced all the enclosures and made all the lines on the map to correspond with them.

Q. What kind of a fence was on the top of the mountain?

A. Posts and rail on the mountain. The fence did not go
204 on the top of the mountain. There is a line on the map showing that fence.

Q. You are positive there was a fence alongside of the mountain?

A. You remember where the stable burned down with the mules in it. It was right north of that. It started right opposite that and went right up the hill.

Q. Do you know whose fence that was?
A. I suppose it was Major Gaines'.
Q. Was there an enclosure east of that?
A. There was an enclosure on three sides, but none on the north side; east going out to the quarter-section line—going out to McGovern's.

By Com. COBURN:

Q. What was the condition of the ground east?
A. It was timber ground except around the house and horse lot.
Q. What was the condition of the ground east of Gaines avenue?
A. It had all been cleared, as now, as far as the depot building. On the left-hand side of the Benton road it was natural timber land until you got to Irish Jimmie; then there is a cultivated field there; a little place where Roe's stable is now that had been cleared off.

FEBRUARY 12TH, 1878.

Offered in evidence contract between Wm. H. Gaines and John J. Gillis, dated Feb'y 13, 1873, marked Exhibit A.

205 Also offers in evidence contract in regard to a building between Gaines and Foster and Walingford, dated 1st of January, 1871, marked Exhib- B.

Also a lease referring to the same parties in reference to building what is known as the Bertsch house, marked Exhibit C.

Also lease to Louis Bertsch from Wm. H. Gaines for the same property, marked Exhibit D.

Also contract of lease between Wm. H. Gaines and S. J. Bumton, marked Exhibit E.

Also bill of S. Cloyes for certain improvements, dated Aug. 1st, 1873, marked Exhibit F.

Know all men by these presents that I, William H. Gaines, of the county of Garland and State of Arkansas, do hereby appoint and constitute Albert B. Gaines, of the city of Hot Springs, county of Garland and State of Arkansas, my agent and attorney-in-fact, for me and in my name to demand, obtain, and receive from the Hot Springs Commission any certificate, award, or any other paper or evidences of indebtedness that may be issued to me and in my name or for my benefit granting me pay for any buildings or improvements, condemned, situated on any of my claims, and to receipt to said commission in my name for any and all such certificates; also to receive in my name and stead and receipt for

206 same any certificate, award, or any other paper given by said commissioners to me giving me the right to purchase from the United States Government all lots or parcels of land described in my petition, number —, and to do any and all acts for me and in my name necessary to be done in order to secure a title from the United States Government to said premises to the same effect as if personally present. My said attorney is hereby empowered to perform all such matter as he may deem necessary for the purpose of

carry- out the objects herein mentioned, and I hereby ratify and confirm all that he may do in the premises.

Witness my hand and seal this 11th day of December, 1879,

WM. H. GAINES. [SEAL.]

STATE OF ARKANSAS,)
County of Garland,) *ss:*

Be it remembered that on this day personally appeared before the undersigned, a notary public within and for the county aforesaid, Wm. H. Gaines, to me well known as the person signing the foregoing power of attorney, and acknowledged that he executed the same for the uses and purposes therein mentioned and set forth.

Witness my hand and seal as such notary public on this 11th day of December, A. D. 1879.

JAS. G. ALLEN,
Notary Public.

[Seal Jas. G. Allen, Notary Public, Garland Co., Ark.]

207 This article, descriptive of the improvements of Abigail Dupass, late Abigail Sabin, at Hot Springs, in the county of Hot Springs and State of Arkansas, lately sold to Wm. H. Gaines and to be delivered to said Gaines on the 1st day of April, 1852, represents that the claim and improvements sold as aforesaid are as follows, to wit: Lying on the east side of Hot Spring creek, immediately at the foot of the Hot Spring mountains, including two hot springs on the spur of the mountain; also a number of cabins at the foot of the mountain, with stables, corn-cribs, a garden, and other lots adjoining the stable; also a field and other cleared land near said buildings; also a large field, or rather a part of said field, near by the improvements aforesaid; all of which said improvements as aforesaid extend over and cover some twenty acres, more or less, consisting of all the improvements on the east side of said Hot Spring creek, lying on the southwest fourth of section thirty-three, township two south, range nineteen west, except a small lot and dwelling-house known as Richard Puckett's and one other small cabin near the lower Hot Springs and a small mill-house and a cabin known as White's mill. The sale of the aforesaid improvements to the said Gaines is upon such condition and terms
208 as are especially set forth in the conveyance of the said Dupass to the said Gaines, heretofore made in writing, and this article is intended as a more full description of the premises aforesaid; and the said Abigail Dupass does hereby deliver unto Lydia Belding, for said Wm. H. Gaines, the entire possession of the premises aforesaid, and does hereby acknowledge the payment of seven hundred dollars to her, the said Dupass, being in full for the improvements and premises conveyed as aforesaid, this 25th day of March, A. D. 1852.

A. DUPAS.

List of Real Property Assessed for Taxation in Hot Springs Co. for the Following Years.

Owners of land.	Part of sec.	No. of acres.	Section.	Town-hip.	Range.	Valuation.	Remarks.
Belding, Ludovicus	S. W.	160	23	2	19	70000	Assessor's book for 1862.
Belding heirs	S. W.	160	33	2	19	20000	" " " 1866.
Belding heirs	S. W.	160	33	2	19	20000	Collector's " " 1866.
Belding heirs	S. W.	160	33	2	19	20000	Assessor's " " 1867.
Belding heirs	S. W.	160	33	2	19	20000	Collector's " " 1867.
Belding, L., heirs	S. W.	160	33	2	19	20000	Assessor's " " 1868.
Belding, L., heirs	S. W.	160	33	2	19	20000	Before reconstruction. Collector's book for 1868.
Belding heirs. Sam. Tate & Co	*S. W.	*160	*33	.....	.....	10000.00	Assessor's " " 1868.
Belding heirs	S. W.	160	33	2	19	10000 70000	After reconstruction. Injunction, 1868.
C't c't sustains injun ction, collector credited same.							
Belding heirs	S. W.	160	33	2	19	60000 10000	Assessor's book for 1869.
Belding heirs	S. W.	160	33	2	19	10000	Collector's " " 1869.
Belding heirs	P't S. W.	160	33	2	19	15000	Assessor's " " 1870.
Belding heirs, 1870	S. W.	160	33	2	19	15000	Collector's " " 1870.
Equalized to $80000.							
Belding heirs	S. W.	160	33	2	19	10000/8	Collector's " " 1871.
Belding heirs	S. W.	160	33	2	19	80000	Collector's " " 1872.

* Erased in copy.

STATE OF ARKANSAS, }
County of Hot Spring }

209 I, John W. Keith, clerk of the circuit court in and for said county, do hereby certify that the annexed and foregoing is a true and perfect copy and transcript of the assessment of the foregoing land as the same appears on the tax books now on file in my office for the years as set forth in said transcript; and I further certify that the tax books from the year 1852 to 1862 are not to be found in their office; that the same were lost during the war or burned with the court-house in 1873.

In testimony whereof I have hereto set my hand and [SEAL.] the seal of said court on this 12th day of February, A. D. 1878.

JOHN W. KEITH, *Clerk.*

Know all men by these presents that I, George Belding, in consideration of one dollar in hand paid and a written agreement bearing even date herewith to convey a certain portion set out in said written agreement that may be awarded to Wm. H. and Maria Gaines, do quitclaim, transfer, assign, set over, and release all my right, title, and interest of every description in and to the southwest quarter of section (33) thirty-three, township (2) two south, and range nineteen west, except that portion on the east side of Valley street and south of and adjoining the ground leased by R. B. Clyde from Wm. H. Gaines, and extending south to the section line

210 and east to Hot Springs creek, which property said George Belding has had in his possession for more than seven years, in the county of Garland and State of Arkansas, and which forms a part of what is commonly known as the Hot Springs reservation, to Wm. H. Gaines, his heirs and assigns; to have and to hold forever.

In witness whereof we have hereunto set our hands and seals, at Hot Springs, Arkansas, this 20th day of October, 1877.

GEORGE BELDING. [SEAL.]
AMANDA BELDING. [SEAL]

COUNTY OF GARLAND, }
State of Arkansas. }

Be it remembered that George Belding, personally well known to me to be the party grantor signing the foregoing deed, — and acknowledged that he signed the same for the purposes therein stated; also at the same time and place appeared Amanda Belding, wife of said George Belding, and, in the absence of her said husband, acknowledged that she had signed her relinquishment of dower for the purpose therein stated and without any undue influence from her said husband, and I do so certify this 20th day of October, 1877, at Hot Springs, Arkansas.

GEO. W. BAXTER,
Notary Public.

211 [Seal Geo. W. Baxter, Notary Public, Garland Co., Ark.]

STATE OF ARKANSAS, *sct:*

In the Supreme Court.

Be it remembered that at a term of the supreme court of the State of Arkansas begun and held at the court-house, in the city of Little Rock, on the first Monday of January, A. D. 1855, amongst others were the following proceedings, to wit, on the 23d day of February, 1855, a day of said term:

PATRICK BURKE, Appellant,
vs.
WILLIAM H. GAINES *et al.*, Appellee. } Appeal from Hot Springs Circuit Court.

This cause came on to be heard upon the transcript of the record of the circuit court of Hot Spring county and was argued by counsel. In consideration whereof it is the opinion of the court that there is no error in the proceedings and judgment of said circuit court in this cause.

It is therefore considered by the court that the judgment of said circuit court in this cause rendered be, and the same is hereby, in all things affirmed with costs.

It is further considered that said appellees recover of said appellant all their costs in this court in this cause expended and have execution therefor.

212 In testimony that the above is a true copy of the judgment of said supreme court rendered in the case therein stated I, Luke E. Barber, clerk of said supreme court, hereto set my hand — affix the seal of said court, at my office, in the city of Little Rock, this 7th day of February, A. D. 1878.

Seal of the Supreme Court of Arkansas.

L. E. BARBER, *Clerk.*

213 The depositions of Wm. H. Gaines, R. G. Davies, and ——, taken at the office of R. G. Davies, in the city of Hot Springs, Garland county, Ark., to be read as evidence by consent of parties in the case of Wm. H. and Maria Gaines against Henry and Charlotte Cohn, pending in the United States circuit court for the eastern district of Arkansas, all exceptions to the relevancy or competency of the evidence being saved and all other exceptions waived.

WM. H. GAINES, being duly sworn, deposes as follows:

My name is Wm. H. Gaines; age, eighty-eight years; I am plaintiff in this suit.

Question. Did you at any time ever have a conversation with Henry Cohn in which you agreed with him that if he would confess a judgment for $150.00 in an action pending in the Garland county circuit court that you would release your claim of title or that of any one else to the land in controversy in this suit?

Answer. I never did.

Question. Did you at any time ever make any agreement with the defendants or either of them with regard to the title or claim of title or claim of right to purchase the same under the act of Congress appointing the Hot Springs commissioners or any act supplemental thereto or authorize any one else to do so for you?

Answer. I cannot recollect the particulars. I went before the commissioners and relinquished to a number, but I do not recollect the number *number*, but it will all show on the record. I never made any such arrangement with Henry Cohn and Charlotte Cohn.

WM. H. GAINES.

R. G. DAVIES states that he was an attorney for the plaintiffs in the case of Wm. H. Gaines *vs.* Henry and Charlotte Cohn in the Garland circuit court. The action was an action of unlawful
214 detainer brought to recover the possession of the property in controversy in this cause under the lease testified about in this suit. After the receiver was appointed I did not think that the plaintiff Gaines had the right to the possession and advised that upon the defendants assenting to a judgment for the amount due that the right to the possession be waived. I so stated to the defendants' attorney, J. B. Wood, and he counselled with his client and agreed to this. I never had any idea or thought of settling the plaintiffs' right to claim the property under any act of Congress; was never authorized to do so; never told the defendants or either of them so or their attorney or any one else. I tried to collect the judgment afterwards and claimed it was a lien on defendants, which he denied and insested that it was only a judgment for $150.00 without any agreement. The reason why I claimed it was a lien was that it was stipulated in the lease that it (the rent) should be a lien upon the improvements on the property. I saw Mr. Wood and Henry Cohn in court talking together after I made the proposition, and after I had made it to him Wood and he told me that it was all right and we so informed the court and I did not hear what he and

Cohn said. G. W. Murphy was also one of the attorneys for the defendants in that case and was present in court at the time. I may have conversed with him about it, but my impression is that Wood was the party who counselled with Henry Cohn.

R. G. DAVIES.

STATE OF ARKANSAS, }
County of Garland. }

I, Henry James, a justice of the peace within and for the township of Hot Springs, in the county of Garland, do certify that the *d*or-going depositions of Wm. H. Gaines and R. G. Davies *was* taken before me and *was* read to and subscribed by them in my presence at the time and place and in the action mentioned in the caption, the said Wm. H. Gaines and R. G. Davies having been first sworn by me that the evidence they should give in the action should
215 be the truth, the whole truth, and nothing but the truth, and their statements reduced to writing by me in their presence, the plaintiff- and defendant- both being present at the examination.

Given under my hand this the 18th day of December, 1885.

H. JAMES,
Justice of the Peace.

(Endorsed:) Filed Dec. 19th, 1885. Ralph L. Goodrich, clerk.

In the U. S. Circuit Court, Eastern District of Arkansas.

WM. H. GAINES and MARIA GAINES, Plaintiffs, }
vs. } In Equity.
CHARLOTTE COHN and HENRY COHN, Defendants. }

It is agreed that the deposition of C. B. Frost may be taken by the defendants before any notary public or *court* of any court of record, without dedimus notice or other formality, upon the following interrogatories and cross-interrogatories, and that it may be read in evidence by them upon the hearing of this cause, subject to exceptions for irrelevancy and incompetency.

G. W. MURPHY,
For Defendants.
R. G. DAVIES,
Attorney for Plaintiffs.

Interrogat. 1. State your name, age, residence, and occupation.
2. Do you know the plaintiff Wm. H. Gaines?
3. Do you know the defendants, Henry Cohn and Charlotte Cohn?
4. Where did you reside in the years 1979 and 1880?
5. Did you in either of those years hear any conversation
216 between the plaintiff Wm. H. Gaines and the defendant- or either of them in reference to the settlement of any lawsuit or matter of dispute between them? If you did, state *state* when and where it occurred, what was said between them, and all you *gnow* about it particularly.

6. If you have stated that you heard a conversation between them—that is, between plaintiff Wm. H. Gaines and the defendants or one of them—with reference to the settlement of a dispute or suit between them with reference to land or the rent of land, describe or designate the land by giving its location, number, or any other circumstances within your knowledge.

G. W. MURPHY,
For Defendants.

Cross:

1. Have you received any letter or letters from Henry Cohn in regard to the matters above which you have testified, or for any one acting for him or Charlotte Cohn? If so, attach all such letters to your deposition in this case.

2. What business were you in, in Hot Springs, Ark., in 1879 and 1880, or in whose employment?

3. Who is present at the taking of these depositions?

4. State particularly all the exact language used by Gaines or Cohn in reference to this matter you have testified about.

5. Are you not friendly to Cohn in this matter and unfriendly towards Gaines?

R. G. DAVIES.

STATE OF LOUISIANA, }
City of New Orleans. }

Deposition of Charles B. Frost, a resident of said city of New Orleans, taken on the 23rd day of October, A. D. 1885, before the undersigned (Andrew Hew, Jr.), a duly commissioned and
217 qualified notary public in and for the parish of Orleans, State of Louisiana, and authorized to administer oaths and to take and certify depositions, *and* at my office, No. 17 Commercial place, in the city of New Orleans, State of Louisiana, between the hours of 9 o'clock a. m. and 5 o'clock p. m., upon the annexed interrogatories and cross-interrogatories and upon the written consent and agreement of counsel, to be read or used as evidence on behalf of defendants in a certain cause now pending and undetermined in the circuit court of the United States for the eastern district of Arkansas, between Wm. H. Gaines and Maria Gaines, plaintiffs, and Charlotte Cohn and Henry Cohn, as defendants.

Said witness, CHARLES B. FROST, being to me produced as aforesaid, and having been by me first duly and solemnly sworn to testify the truth, the whole truth, and nothing but the truth in regard to the matters in controversy aforesaid, deposed as follows:

First interrogatory. State your name, age, residence, and occupation.

Answer. Charles Ba. Frost; aged fifty-four years; a resident of New Orleans, Louisiana; by occupation, engaged in the hotel and restaurant business.

Second interrogatory. Do -u know the plaintiff Wm. H. Gaines?

Answer. I do.

Third interrogatory. Do you know the defendants, Henry Cohn and Charlotte Cohn?

Answer. I do.

Fourth interrogatory. Where did you reside in the years 1879 and 1880?

Answer. Up to December 25th, 1879, I was living at Brownsville, Texas, and thereafter, until about October, 1880, I lived at Hot Springs, Arkansas, and then I moved to Little Rock, Arkansas.

Interrogatory fifth. Did you, in either of these years, hear aoy conversations between the plaintiff William H. Gaines and the defendants or either of them in reference to the settlement of
218 any land suit or matter of dispute between them? If you did, state when and where it occurred, what was said between them, and all you know about it particularly.

Answer. I did hear them coaversing, in April or May, 1880, at Cohn's news stand, which was in the front part of my restaurant on Central avenue, of the favorable award that had been made to Cohn of the property whereon the restaurant and news stand was conducted, but details and particulars of the conversation I do not recollect.

Ini*n*terrogatory sixth. If you have stated that you heard a *l*onversation between them—that is, plaintiff Wm. H. Gaines and the defendants or one of them—with reference to the settlement of a dispute or suit between them with reference to land or the rent of land, describe or designate the land by giving its location, nomber, or any other circumstances within your knowledge.

Answer. I only know that the property was that whereon I kept a restaurant in 1880, at Hot Springs, Arkansas, near the then Malvern crossing, but now said crossing is a block further down.

First cross-interrogatory. Have you received any letter or letters from Henry Cohn in regard to the matters above which you have testified, or for any one acting for him and Charlotte Cohn? If so, attach all such letters to your deposition in this case.

Answer. I did, from H. Cohn once, but have not the letter.

Second cross-interrogatory. What business were you in at Hot Springs, Arkansas, in 1879 and 1880, or in what employment?

Answer. I was, in 1880, keeping this restaurant spoken of.

Third cross-interrogatory. Who is present at the taking of these depositions?

Answer. Myself and the notary and his clerk.

Fourth cross-interrogatory. State particularly all the exact language used by Gaines or Cohn in reference to this matter you have testified about.

219 Answer. I cannot recall it—trying.

Fifth cross-interrogatory. Are you more friendly to Cohn in this matter and unfriendly towards Gaines?

Answer. I am friendly to either.

C. B. FRIST.

And I, Andrew Held, Jr., an acting and duly *l*ommissioned notary public in and for the par*t*ish of Orleans, State of Louisiana, do

hereby certify and make known that the for-going deposition of Charles B. Frost was taken before me on this Oct. 23rd, 1885, between the hours and at the place in the caption hereof above mentioned; that said witness was by me first duly sworn that the evidence he should give in the action named and mentioned in said caption should be the truth, the whole truth, and nothing but the truth, and to make true answers to the annexed interrogatories and cross-interrogatories, and thereupon, after being sworn, to testify as above set forth upon the annexed interrogatories which were propounded to him seriatim; that the testimony of said witness was by me reduced to writing and read to and subscribed by him in my presence at the time and place aforesaid; that neither party, plaintiff or defendants, were present in person or by agent or attorney at the taking of said depositions, and that said witness is a resident of New Orleans, Louisiana.

In faith whereof I have hereunto set my hand and seal at New Orleans this October 23rd, 1885.

ANDREW HELD, JR.

(Endorsed:) Filed February 1st, 1886. Ralph L. Goodrich, clerk.

The deposition of John Neff, taken on the 23rd day of October, 1885, between the hours of nine o'clock a. m. and five o'clock p.
220 m., at the office of John B. Carter, notary public in the city of Marshall, Harrison county, State of Texas, *as* upon the annexed and for-going interrogatories and cross-interrogatories under the annexed and for-going agreement of the attorneys of parties, to be read as evidence in an action or suit between William H. Gaines and Maria Gaines, plaintiffs, against Charlotte Cohn and Henry Cohn, in equity, pending in the circuit court of the United States for the eastern district of Arkansas.

The witness, JOHN NEFF, being by me first duly sworn that the evidence he should give in answer to said interrogatories and cross-interrogatories in said action should be the truth, the whole truth, and nothing but the truth, deposes and answers as follows:

Interrogatory 1st. State your name, age, residence, and occupation.

Answer. John Neff; fifty-eight years of age; Marshall, Texas; saloon-keeper.

Interrogatiry 2nd. Do you know the plaintiff Wm. H. Gaines?

Answer. Yes.

Interrogatory 3rd. Do you know the defendants, Henry Cohn and Charlotte Cohn?

Answer. Yes.

Interrogatory 4th. Where did you reside in the years 1879 and 1880?

Answer. In Hot Springs, Arkansas.

Interrogatory 5th. Did you in either of those years hear any conversation between the plaintiff Wm. H. Gaines and the defendants or either of them in reference to the settlement of any lawsuit or matter of dispute between them? If you did, state when and where

it occurred, what was said between them, and all you know about it particularly.

Answer. I heard such a conversation. I am not positive about the year, but think it was in the summer of 1879, in Henry Cohn's stori in Hot Springs, Arkansas. As near as I can recollect, William Gaines stepped into the store of Henry Cohn and asked Cohn something about a settlement which Gaines wished to make with Cohn in reference to some money or back rents which, I understood between them, was coming to Major Gaines. Cohn at first
221 stated he did not know what he, Gaines, meant; then Gaines stated what it was, as far as I can recollect. Cohn said that he, Cohn, had no money and could not settle, meaning at that particular time. Gaines then said that the United States had given him the lot and improvements or houses—do not know which language was used to the defendant Cohn—meaning the lot and improvements where the Cohn house, on Main street, stood then, and *and* Gaines then said that he was not particular about the money then, but wanted Cohn to confess judgment for the amount and have the same entered on the docket of the court, and that he, Gaines, would have it so fixed in court that he, Cohn, should hereafter remain in peac-able possession of the property, and that he, Gaines, would not thereafter have any claim and right against the property of H. Cohn and wife, meaning, as far as I understood, that Gaines *that Gaines* relinquished all right, title, and claim to the Cohn house, in the city of Hot Springs. Cohn said that he, Cohn, would agree to that proposition. The above is all that I now can recollect about the matters.

Interrogatory 6th. If you have stated that you heard a conversation between them—that is, between plaintiff Wm. H. Gaines and the defendants or one of them—*with* reference to the settlement of a dispute or suit between them with reference to land or the rent of land, describe or designate that land by giving its location, number, or any other circumstance within your knowledge.

Answer. The land, or house and lot, was situated on Main street, in Hot Springs, Arkansas, and was known as the Cohn house; do not know the number of the same.

Cross-examination:

Cross-interrogatory 1st. Have you received any letter or letters from Henry Cohn in regard to the matter about which you have testified or from any one *acting* for him or Charlotte Cohn? If so, attach all such letters to your deposition in this case.

Answer. I received a letter from Henry Cohn some time
222 since telling me that he would probably need my testimony. I looked for the letter this morning, but could not find it, and I think that I destroyed it, as it was of no value to me. In the letter he told me that he would send me the interrogatories to answer in the case, and I received the interrogatories on the 21st.

Cross-interrogatory 2nd. What business were you in in Hot Springs, Ark., in 1879 and '80, or in whose employment?

Answer. I was in Hot Springs in 1879 and '80 for my health, and was not in the employment of any one at all.

Cross-interrogatory 3rd. Who is present at the taking of these depositions?

Answer. Myself and John B. Clark, the notary public.

Cross-interrogatory 4th. State particularly all the exact language used by Gaines or Cohn in reference to the matter you have testified about.

Answer. As near as I can recollect, I have given the same in answer to direct interrogatory No. 5.

Cross-interrogatory 5th. Are you not friendly to Cohn in this matter and unfriendly towards Gaines?

Answer. I am just as friendly toward Gaines as I am to Cohn; no difference in my feeling to either of them.

JOHN NEFF.

STATE OF TEXAS,
County of Harrison, City of Marshall.

I, John B. Carter, a notary public, of the State of Texas, county of Harrison and city of Marshall, do certify that the for-going deposition of John Neff was taken before me upon the annexed and foregoing interrogatosies, which were propounded to him seriatim and *was* read to and subscribed by him in my presence at the time and place and in the action mentioned in the caption, the
223 said John Neff having been first sworn by me that he should make full and true answers to said interrogatories and cross-interrogatories, and that the evidence he should give in answer to them in said action should be the truth, the whole truth, and nothing but the truth, and that his answers and statements were reduced to writing by me in his presence, neither party being present at the examin-tion, either in person or by attorney.

Given under my hand and seal of office, at office, in the city of Marshall, Harrison county, Texas, this the 23rd day of October, A. D. 1875.

JOHN B. CARTER,
Notary Public in and for the City of Marshall, Harrison County, State of Texas.

Fees, $2, paid by def'ts.
JOHN B. CARTER.

In U. S. Circuit Court, Eastern District of Arkansas.

WM. H. GAINES and MARIA GAINES, Plaintiffs,
vs.
CHARLOTTE COHN and HENRY COHN, Defendants. } In Equity.

It is agreed that deposition of John Neff may be taken by the defendants before any notary public or clerk of any court of record without dismissal, notice, or other formality upon the following interrogatories and cross-interrogatories, and that it may be read in

evidence by them upon the hearing of this cause, subject to exceptions for irrelevancy and incompetency.

G. W. MURPHY,
Attorney for Defendants.
M. W. BENJAMIN,
Counsel for Plaintiffs.

Interrogatory 1. State your name, age, residence, and occupation.

Interrogatory 2. Do you know the plaintiff Wm. H. Gaines?

224 Interrogatory 3rd. Do you know the defendants, Henry Cohn and Charlotte Cohn?

Interrogatory 4th. Where did you reside in the years 1879 and 1880?

Interrogatory 5th. Did you in either of those years hear any conversations between the plaintiff Wm. H. Gaines or the defendants or either of them in reference to the settlement of any lawsuit or matter of dispute between them? If so, state when and where it occurred, what was said between them, and all you know about it particularly.

Interrogatory 6th. If you have stated that you heard a conversation between them—that is, between plaintiff Wm. H. Gaines and the defendants or one of them—with reference to the settlement of a dispute or suit between them with reference to land or the rent of land, describe or designate that land by giving its location, number, or any other circumstance within your knowledge.

G. W. MURPHY,
Counsel for Defendants.

X ex.:

1. Have you received any letter or letters from Henry Cohn in regard to the matters about which you have testified or for any one acting for him or Charlotte Cohn? If so, attach all such letters to your deposition in this case.

2. What business were you in in Hot Springs, Ark., in 1879 and '80, or in whose employment?

3. Who es present at the taking of these depositions?

4. State particularly all the exact language used by Gaines or Cohn in reference to the matter you have testified about.

5. Are you not friendly to Cohn in this matter and unfriendly towards Gaines?

M. W. BENJAMIN AND R. G. DAVIES,
For Plaintiffs.

225 (Endorsed:) Filed February 1st, 1886. Ralph L. Goodrich, clerk.

The deposition of H. Cohn, taken before me on this 11th day of September, 1885, at the law office of John M. Harrell, Esq., in the city of Hot Springs, Arkansas, in the case of William H. Gaines and Maria Gaines, plaintiffs, *versus* Charlotte Cohn *et al.*, defendants, pending in the circuit court of the United States for the eastern district of Arkansas, under an agreement of plaintiffs and of said de-

fendant-, by their respective attorneys, to be read as evidence in the trial of said case, and also, as far as applicable, in the trials of the following cases pending in said court:

William H. Gaines *et al. vs.* B. W. Goode *et a-.*
" " "
" " Harris Toney *et al.*
" " James A. Smith *et al.*
" " "
" " Thomas Howard *et al.*
" " "
" " D. C. Rugg *et al.*
" " "
" " R. E. Allen.
" " John Adamison *et al.*

Also in all cases pending in said court between said plaintiffs and defendants for whom John M. Harrell, Esq., is attorney:

H. COHN, being duly sworn, deposes as follows:

Q. State your name, age, and occupation and residence.

A. My name is H. Cohn; my age is 41 years; my occupation, a merchant; my residence is Hot Springs, Arkansas.

226 Q. Are you one of the defendants in this case?

A. I am.

Q. In the testimony taken before the Hot Springs Commission in these cases I find the name J. H. Cohn mentioned frequently. Is that name correct, or what should it be?

A. It should be R. H. Cohn.

Q. There is a copy of a judgment of the Garland circuit court attached to your answer in this case in favor of the plaintiff W. M. Gaines for a sum of money, about $150, and in favor of yourself or yourself and Charlotte Cohn for the possession of some land. What land is that?

A. *Is it* lot 7, in block 130.

Objected to by attorney for plaintiff-, M. W. Benjamin, because the judgcent and records and pleadings in the case will show what there is in it.

Here, at the request of the attorney for plaintiff-, he was permitted to ask the witness the following questions:

Q. What relation is Charlotte Cohn to you?

A. She is my wife.

Q. Is she the owner of the property in *in* controversy?

A. Yes, sir.

Objected to by the attorney for plaintiff, M. W. Benjamin, because the witness is an incompetent witness; that he cannot testify for or against his wife.

Q. What other land, if any, did you or Charlotte Cohn ever hold as tena*tns* of the plaintiffs or either of them?

A. No other land.

Q. Was that the same or different land from that that Charlotte Cohn applied for before the Hot Springs Commission?

227 A. It is the same.

Q. In that year and what month was the suit brought, if you remember?

Objected to by attorney for plaintiff, M. W. Benjamin, because the records will show.

A. I think it was in the year 1875 or 1876.

Q. Was that before or after the land of the Hot Springs reservation was laid out in lots and blocks and numbered?

A. Before.

Q. I wish you would tell in your own way how the judgment came to be rendered in that way for money in favor of the plaintiff Wm. H. Gaines and for you or you and your wife for the possession of the land. State all that was said, if anything, between you and him or you and his attorney for him in reference to the matter.

Objected to by attorney for plaintiff, M. W. Benjamin, because it is incompetent.

A. I think it was in the summer of 1880 Wm. H. Gaines came to my place of business and asked me, Can't we settle our lawsuit or disputes that the commissioners have awarded you the land and improvements? I asked him what lawsuit that he meant. He said the lawsuit for back rents. I told him that I was not able then to settle. He said that would not make no difference; to let him take a judgment for the rent and he would let me take a judgment for the land and houses, which he will certify on the record. I said, All right; I will agree to it.

Q. Do you know whether the Garland circuit court was in session then or not?

A. I think, to the best of my recollection, that the court was in session then.

Q. Were you acting for yourself then; and, if not, for whom

228 and how were you action?

A. I was acting for my wife.

Q. In what capacity were you acting for her?

A. I was acting as her agent.

Q. In reference to this lot, has she always managed it in person or through some one else?

A. Always through me.

Q. What demand, if an-, for that land *if any, for that land* did the plaintiffs after that and before this suit make of you or your wife?

A. None.

Q. What suits did the plaintiff Wm. H. have against you or you and your wife at the time of the conversation?

A. Had suits for ground rent.

Q. How many suits did he have against you?

A. Only one suit.

Q. Was that suit for ground rent, or was it a suit for the possession of land, or was it for both?

Objected to by attorney for plaintiff, M. W. Benjamin, because the records will show, and that is the best evidence.

A. I think it was for both, as far as I recollect.

Cross-examination by R. G. DAVIES:

SEPTEMBER 25TH, 1880.

Proceeded with the cross-examination of the witness, H. COHN, by the attorney for plaintiff, R. G. DAVIES:

Q. Are you the Henry Cohn who was defendant in the case- No. 199, 677, and 234, in Garland circuit court, in which Wm. H. Gaines was plaintiff and Henry and Charlotte Cohn were defendants?

A. I was the defendant in some of those cases.

Q. Did you not in the trial of one or the other of thise
229 cases swear or make affidavit that the judgment for $150 of which you speak in your direct examination was for money only, and that you made no agreement whatever with reference to the property in controversy so fas as said judgment was concerned?

A. I can't tell now unless I could see the papers.

Q. Did you not say and swear at said time and place that you never authorized your attorney, J. B. Wood, to make any agreement in regard to said judgment, except to confess a judgment for $150?

A. I don't know.

Q. Was not the agreement to confess a judgment made between R. G. Davies, as the attorney of Wm. H. Gaines, and J. B. Wood, as your attorney, and not by you personally?

A. I don't remember now, it has been so long.

Q. Have you not recently examined the papers in said cases before you came here to testify?

A. I think I did.

Q. Did you see any affidavits made by yourself and others among the papers?

A. I could tell if I looked for any affidavits.

Q. Do you claim now that Gaines relinquished to you whatever interest he had in the property in controversy in consideration of your confessing a judgment for $150?

A. That was my understanding with Gaines.

Q. Was that the amount that you were to pay Gaines for the relinquishment of all claims against the property?

A. I think that was the amou-t, or it was $150 or $51. I don't remember.

Q. Was this $150 the purchase price you were to pay Gaines for his interest in the property?

A. I don't think that there was anything said about any interest in the property.

230 Q. What was the $150 for?

A. The $150 was that if I confess judgment that Major Gaines would confess judgment for the land and improvements now in controversy, to be made in my favor.

Q. Did you owe Gaines $150 as rent for the property up to the time that the receiver took possession?

A. I don't know up to what time. I could not tell exactly.

Q. Was tte receiver in possession at the time that Gaines brought the suit against you of unlawful detainer for the possession of the property and the rents due him?

A. I don't remember.

Q. Was he at the time the judgment was rendered?

A. I don't remember.

Q. Did you lease the property in controversy from the receiver?

A. I can't tell now. Some of us had leases and some did not. I paid him rent.

Q. Was that for the property in controversy?

A. Yes.

Re-examination:

Q. Were you present at any conversation between Mr. Davies, as the attorney for Gaines, and J. B. Wood about the judgment to be rendered?

A. I think I was.

Q. Was that before or after you and Gaines had made the agreement?

A. It was after.

Recross-examination:

Q. What was said at the conversation between Wood and Davies?

Objected to by attorney for defendant.

A. I don't remember what conversation Mr. Davies and Mr. Wood had.

H. COHN.

231 STATE OF ARKANSAS, }
County of Garland. }

I, W. A. Kirk, a notary public within and for the county of Garland, State of Arkansas, do certify that the foregoing deposition of H. Cohn was taken before me and read to him and subscribed by him at the time and place and in the action mentioned in the caption, he having been by me first duly sworn that the evidence he should give in the action should be the truth, the whole truth, and nothing but the truth, and that his statement was reduced to writing by me in his presence, the plaintiff- and defendant- being present by their attorneys at the examination.

Given under my hand and official seal this 11th day of September, 1885.

[SEAL.] W. A. KIRK,
Notary Psblic.

Pees, $4, paid by def't Charlotte Cohn.

(Endorsed:) Opened and published by order of court January 6th, 1886. Ralph L. Goodrich, clerk, by W. P. Feild, D. C.

Your petitioner avers that at the time they entered the premises herein claimed as aforesaid Abagail Sabin had made and claimed to

own and had possession of certain improvements on the east side of Valley street south of the now Hot Springs hotel, and your petitioner brought suit against said Abagail Sabin on the 5th day of January, 1852, for said improvements and possession and recovered judgment therefor, which judgment was affirmed by the supreme court of the State of Arkansas and by the Supreme Court of the United States, and on the 6th day of March, 1856, your petitioner, Wm. H. Gaines, was by the court put in actual possession of said premises and improvements and peac-ably continued to possess, control, use,
232 and rent said premises until and including the 24th day of April, 1876, a period of more than twenty years; and after your petitioner had used and rented said improvements for over — years they became old and delapidated and were insufficient to meet the demands of a growing town and if the large number of visitors that annually came to the Hot Springs for their health, and your petitioner, desiring to aid in meeting that demand, on the 20th day of May, 1875, leased the following ground to R. H. Cohn, to wit: Commencing at a point N. 9° 15″ E. of sec. corner-post of sections 33 and 32 south and sections 4 and 5, T. 3 S., all in range 19 west and distant therefrom 820 ft., thence bearing north 77° E. 65 ft.; thence south 13° 52 ft.; thence bearing S. 77° W. 65 ft.; thence — 13 W. 52 ft. to the point of commencement, lying and being in the S. W. ¼ of S. W. ¼ of sec. 33, T. 2 south, R. 19 west, all the above bearings being read from the magnetic meridian, with the privilege of erecting new and more commodious buildings thereon; and all the parties to said lease covenanted and agreed that said R. H. Cohn might remove said new buildings after the lease expired, provided the rents were fully paid; but it was expressly covenanted and agreed that no building- should be removed unless the rent was all paid, and that the same were to be removed within thirty days after the expiration of the lease—that is to say, all buildings erected by R. H. Cohn and assigns were to be the property of William H. Gaines unless all rents were fully paid and unless the buildings erected were removed within thirty days after the expiration of the lease. Your petitioner avers that the rents upon said lease have not all been paid; that there was due on the 1st day of April, 1876, the sum of ($216.46) two hundred and sixteen $\frac{46}{100}$ dollars, which rent still remains due and unpaid; and your petitioner avers that said lease by its own terms long since expired, and that said R. H. Cohn and his assign, Charlotte Cohn, have wholly failed both to pay said rent and to remove said buildings within thirty days after the expiration of the lease; and your petitioner expressly avers that in consequence of said failure to pay said rent and remove said buildings as aforesaid that said buildings and *buildings* thus erected became
and are the property of your petitioner, Wm. H. Gainer, both
233 by the agreement of your petitioners and by the law of the land; that said improvements were made previous to the 24th day of April, 1876, and are worth the sum of two thousand dollars.

Your petitioner is informed that R. H. Cohn sets up no claim to said property, but that one Charlotte Cohn is setting up some pretended claim thereto, which claim is wholly unfounded in law and

equity and is contrary to good conscience. Said Charlotte Cohn, nor any one whom she claims through, -ever occupied or claimed said premises prior to April 25th, 1876. A copy of the lease is hereto attached and marked Exhibit 24 and prayed to be taken as part hereof.

Agreement of Lease.

This agreement of lease, made this 1st day of March, 1875, between Wm. Gaines, as lessor, and R. H. Cohn and A. J. Fife, as lessees, witnesseth:

That the lessor has leased and demised to the lessees a certain lot or parcel of land lying and being situate in the county of Garland, in the State of Arkansas, and described as follows, to wit: Beginning at the south side of the alley 9 ft. 4 inches south of the Caver building, on the east side of the street, in the town of Hot Springs, run thence south along the east side of the street 50 ft. to the Gillis house; thence east at right angles with the street 85 ft. to the center of Hot Springs creek; thence west parallel with the second line 85 ft. to the place of beginning, and occupied by the old log building formerly known as the Bush house:

To have and to hold the same unto the lessee- for the term of one year from the 1st day of March, 1875, to be renewed, at the election of the lessee-, from year to year until the title to the Hot Springs quarter section of land is settled; and the lessee- covenants
234 and agrees to pay to the lessor or his legal representatives an annual rent on said lot of $500 in installments of forty-one $\frac{66}{100}$ dollars each on the 1st day of each and every month during the continuance hereof; and it is agreed that all buildings and improvements that may be erected on said lot by the lessee- may be removed therefrom by the lessee- or *his* legal representatives at any time within thirty days after the expiration of the same: Provided, however, that the lessor have a lien on all such buildings and improvements to secure the rent here above provided for, and no *ruch* buildings shall be removed therefrom while the said rent or any part thereof remains due or unpaid, and if the lessee- or *his* legal representatives sh-ll at any time make default and shall be in arrears with the said rent or any part thereof for fifteen days at any one time the lessor may enter upon the premises and eject the lessee- therefrom and repossess himself of the same without notice or other legal process.

This lease shall not be assigned nor the premises underlet without the written consent of the lessor being first endorsed hereon.

In witness whereof the parties hereto have hereunto set their hands and seals, at Hot Springs, this 1st day of March, 1875.

W. M. H. GAINES, [SEAL.]
Per R. G. DAVIES.
R. H. COHN. [SEAL.]
A. J. FIFE. [SEAL.]

235 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *June 28th*, 1884.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed copy of petition No. 188, before the Hot Springs Commission, testimony submitted in support of same, and the finding of the commission are true and literal exemplifications of the originals on file and on record in thes office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] N. C. McFARLAND,
Commissioner of General Land Office.

UNITED STATES OF AMERICA:

Hot Springs Commission.

HOT SPRINGS, ARKANSAS, *June 25th, A. D.* 1877.

In the Matter of the Claim of CHARLOTTE COHN.

To the Hot Springs commissioners:

The petitioner, Charlotte Cohn, now residing in Hot Springs, Garland county, in the State of Arkansas, represents that he claims the following-described tract of land, a map of which is filed herewith and made a part hereof, situated in the Hot Springs reservation, which tract is bounded as follows, to wit: On the north by an alley, with a line running N. 77° E. 80 ft.; on the e-st by Hot
236 Springs creek, with a line running S. 13° E. 52 ft.; on the south by the claim of L. Thal, with a line running S. 77° W. 80 ft.; on the west by Valley street, with a line running N. 13° W. 52 ft. to the place of commencement, lying and being in the southwest ¼ of the southwest ¼ of section 33, T. 2 S., R. 19 W.

That the following-described improvements are situated thereon, to wit: A three-story frame boarding and store house, 52 ft. x 46 ft.; that they were erected by Henry Cohn in the month of July, in the year 1875; that they are of the value of thirty-five hundred dollars.

The petitioner further says that he claims to be the owner of the said premises and entitled to purchase the same from the United States upon the following grounds, to wit: That on the 15th day of April, 1875, Miss R. H. Cohn and A. J. Fife purchased the property from Wm. H. Gaines, as will appear from an instrument of writing, a copy of which is hereunto attached, which include the building known as the Bust house; that in May, 1875, J. F. Fife sold his interest to Miss R. H. Cohn; that in August, 1875, Miss R. H. Cohn sold the same to Mrs. Charlotte Cohn, wife of Henry Cohn, your petitioner; that all of the improvements above described were erected by Henry Cohn subsequent to said purchase from Wm. H. Gaines; that she has had peaceable possession of said premises ever since said purchase, and still occupies and resides upon said premises and knows of no other claimants for any portion of said lot; that she hereunto

attaches a copy of the transfer from Miss R. H. Cohn to Mrs. Charlotte Cohn; that she hereunto attaches a copy of the transfer from A. J. Fife to R. H. Cohn.

Copy.

Know all men by these presents that I, A. J. Fife, for and in the consideration of the sum of $150 to me in hand paid by R. H. Cohn, have sold and by these presents do sell, grant, and convey unto the said R. H. Cohn and unto her heirs and assigns forever all my
237 right, title, and interest in the house heretofore known as the Bust house, situated on land belonging to Wm. H. Gaines, on the east side of the street, in the town of Hot Springs, in the county of Garland, in the State of Arkansas, together with all the appurtenances, stands, attachments, privileges, and immunities thereto belonging.

Witness my hand and seal this 29th day of May, 1875.

A. J. FIFE. [SEAL.]

Witness:
A. CURL.

HOT SPRINGS, ARKANSAS, *April 15th*, 1885.

Know all men by these presents that I, Wm. H. Gaines, have this day bargained and sold, and by these presents do sell, unto A. J. Fife and R. H. Cohn that certain lot or parcel of buildings situated south of Caver house, north of Gillis house, and known as the Old Valley house, in Hot Springs, Garland county, Arkansas, for the sum of $25 cash in hand and $25 in carpenter's work.

WM. H. GAINES,
Per R. G. DAVIES, *Attorney*.

Witness:
F. SCHICKER.
W. P. MANGUM.

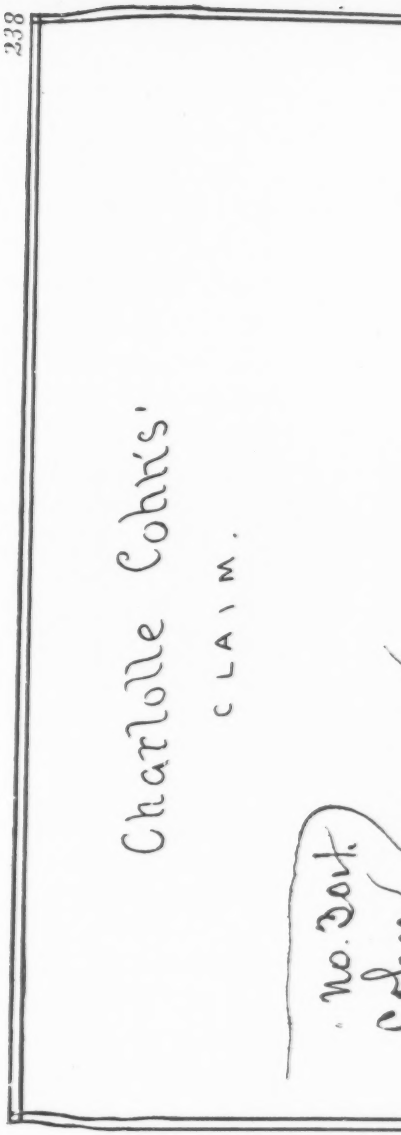
Received on the above $25 cash and $20 cash and due bill for $5 in full for the above-mentioned buildings.

WM. H. GAINES,
Per R. G. DAVIES, *Attorney*.

(Here follows diagram marked p. 238.)

239 Know all men by these presents that I, R. H. Cohn, of the county of Garland, State of Arkansas, in consideration of $2,500 to me paid by Charlotte Cohn, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said Charlotte Cohn all of my right, title, and interest in and to a certain tract and lot of land leased to me by William H. Gaines, described as follows: Beginning at the south side of the alley nine feet and four inches south of the Caver building, on the east side of the street, in the said town of Hot Springs, run thence south along the street fifty feet to the Gillis house; thence east, at right angles with the street, eighty-five feet to the center of Hot Springs creek;

238



No. 5014.
Cohn
v.
Gaines
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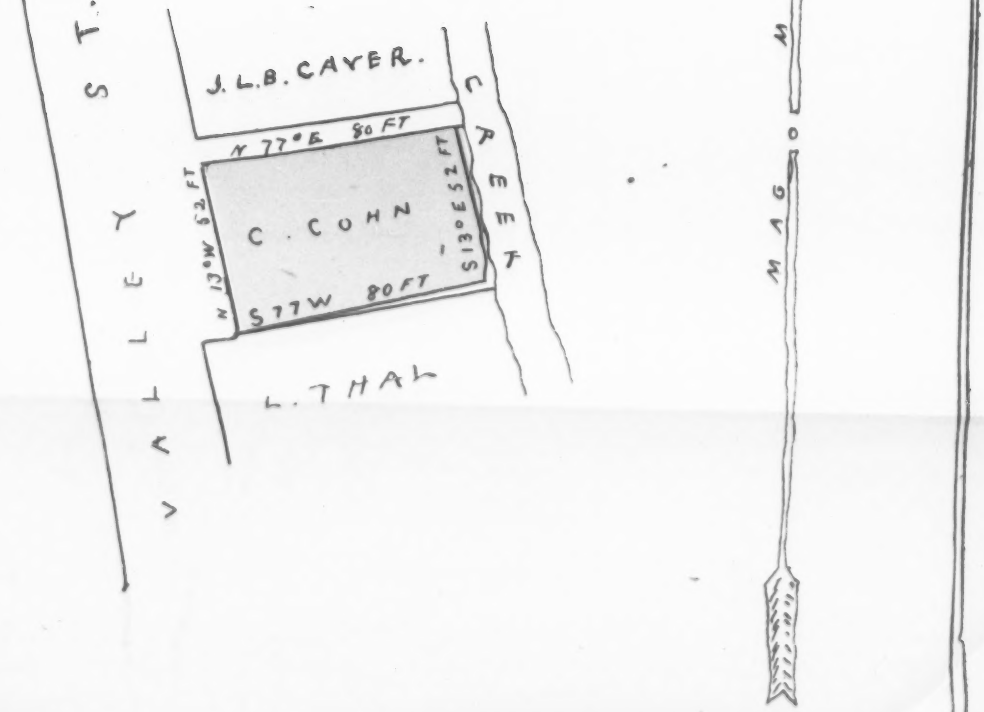
h. 238.



thence north, parallel with the first line, fifty feet; thence west, parallel with the second line, eighty-five feet to the place of beginning, embracing a lot fifty feet on the street and running back eighty-one feet; to have and to hold the above-granted premises to the said Charlotte Cohn, her heirs and assigns, to her use and behoof forever, together with all the improvements on the said lot of land now completed or in process of completion; and I, the said R. H. Cohn, for myself and for my heirs, covenant with the said Charlotte Cohn that I have good right to sell and convey the same to the said Charlotte Cohn, her heirs and assigns forever, as aforesaid, and that I will warrant and defend the same to the said Charlotte Cohn against the lawful claims and demands of all personr claiming under, by, or through me.

In witness whereof I, the said R. H. Cohn, have hereunto set my hand and seal this 14th day of August, A. D. 1875.

R. H. COHN. [SEAL.]

STATE OF ARKANSAS, }
County of Garland. }

Be it remembered that on this 14th day of August, A. D. 1875, before me, A. W. B. Reed, clerk of the county and State as
240 aforesaid, personally appeared R. H. Cohn, who in due form of law acknowledged that she executed the for-going deed for the uses and purposes therein set forth and expressed, and that the same was her free act and deed.

Witness my hand an- seal of office the day and year first above written.

[Seal of Circuit Court, Garland Co., Ark.]

A. W. B. REED, *Clerk.*

STATE OF ARKANSAS, }
Garland County, } *ss:*

I, A. W. B. Reed, county clerk, circuit clerk, and *ex officio* recorder in and for the county of Garland aforesaid, do hereby *hereby* certify that the foregoing deed was filed in my office for record on the 23rd day of August, A. D. 1875, at 9 o'clock a. m., and the same is now duly recorded, with the proper acknowledgments and certificates thereon, in Record Book B, on pages 35 and 36.

In witness whereof I have hereunto set my hand and affixed the seal of my office this 23rd day of August, A. D. 1875.

A. W. B. REED,
Clerk and ex Officio Recorder.

The petitioner files herewith copies of the documents hereinbefore referred to and makes them a part hereof. Wherefore he prays that the commissioners shall adjudge to him the right to purchase the said premises from the United States and for other proper relief.

CHARLOTTE COHN.

(Endorsed:) No. 188. Hot Springs Commission. Petition of Charlotte Cohn. Filed July 3rd, 1877. J. W. Anderson, clerk H. S. Comm. Examined Feb. 16th, 1878, Record B, p. 122. Adjudicated Oct. 9th, 1879.

241 "EXHIBIT A."

This agreement of lease, made this 20th day of May, 1875, between Wm. H. Gaines, as lessor, and R. H. Cohn, witnesseth:

That the lessor, Gaines, has leased and demised to the lessee, R. H. Cohn, a certain lot or parcel of land lying and being situate in the town of Hot Springs, in the county of Garland, in the State of Arkansas, described and bounded as follows, to wit: Beginning at the south side of the alley nine feet and four inches south of the Caver building, on the east side of the street, in the said town of Hot Springs, run thence south along the street fifty feet to the Gillis house; thence east at right angles with the street eighty-five feet to the center of the Hot Springs creek; thence north parallel with the first line fifty feet; thence west parallel with the second line to the place of beginning, embracing a lot fronting fifty feet on the street and running back eighty-five feet to the center of said Hot Springs creek and embracing the ground occupied by the old Bush house; to have and to hold the same unto the said R. H. Cohn from the 1st day of June, 1875, to the first day of June, 1876, with the privilege of renewing from year to year, at the election of tte lessee, R. H. Cohn, until the title to the Hot Springs quarter section of land is settled, the lessee, R. H. Cohn, yielding and paying to the said Gaines as a rent therefor the sum of five hundred dollars per annum, to be paid in installments of forty-one $\frac{66}{100}$ dollars each, monthly, in advance, on the first day of each and every month during the continuance hereof; and the lessee covenants to deliver peac-able possession of said demised property to the lessor, Gaines, or his legal representatives at the expiration hereof; and it is further agreed that the lessee may remove any and all buildings situated on said lot at any time within thirty days after the expiration hereof: Provided, however, that the lessor shall have a lien on all such buildings to secure the payment of the rent hereinabove provided for;

242 and if the lessee shall make default and shall be in arrears with said rent or any part thereof for ten days at any one time, it shall work a forfeiture of this lease, and the lessor may at his own election enter upon the premises, eject the lessee therefrom, and repossess himself of the same without notice or other legal process. This lease shall not be assigned nor the *nor the* premises underlet without the written consent of the lessor being first endorsed hereon.

Witness the hand and seal of the parties hereto this 20th day of May, 1875.

WM. H. GAINES. [SEAL.]
R. H. COHN, [SEAL.]
By HENRY COHN, *Attorney.*

Witness:

——— ———.

STATE OF ARKANSAS, }
County of Garland, } *ss:*

I, R. H. Cohn, for and in consideration of the sum of — dollarr to me in hand paid by Charlotte Cohn, do tereby transfer and assign the within and for-going lease unto the said Charlotte Cohn, wife of Henry Cohn, to have and to hold the same unto her during the remainder of the time therein—

The said Charlotte Cohn and her husband, Henry Cohn, assuming all and singular the obligations of the lessee, and this lease is transferred with the express understanding that the lien of the landlord, W. H. Gaines, on all such buildings situate on said lot therein described shall remain and be as binding upon the assignea and the buildings situate upon said lot as upon the original lessee; and the said Charlotte Cohn and her husband, Henry Cohn, covenant and agree to perform all and singular the covenants of the lessee as expressed in said lease, and to hold the same upon the conditions and penalties tterein set forth and expressed, and the lessor, Gaines, consents to said assignment and transfer upon the aforesaid conditions.

Witness our hands and seals this 14th day of August, 1885.

R. H. COHN. [SEAL.]
CHARLOTTE COHN. [SEAL.]
HENRY COHN. [SEAL.]
WM. H. GAINES. [SEAL.]

243 *Notice.*

To Henry Cohn and Charlotte Cohn, of Hot Springs, Garland county, Arkansas:

Be pleased to take notice that the undersigned, Wm. H. Gaines, demands of you the possession of the following-described premises, to wit: That certain tract or parcel of land situate in the town of Hot Springs, Garland county, State of Arkansas, beginning at the south side of the alley nine feet and four inches south of what is known as the Caver building, on the east side of the street, in said town of Hot Springs, running thence south along the street fifty feet to the house called the Gillis house; thence east at right angles with the street eighty-five feet to the center of the Hot Springs creek; thence north parallel with the first line fifty feet; thence west parallel with the second line eighty-five feet to the place of beginning, embracing a lot fifty feet on the street and running back eighty-five feet to the center of said Hot Springs creek, and embracing the ground occupied by the Bush house, to be surrendered unto the said William H. Gaines on Thursday, the 10th day of February, A. D. 1876, and unless the said property is surrendered the said William H. Gaines will proceed to forcibly eject you therefrom by an action of unlawful detainer.

Witness my hand this the 8th day of February, A. D. 1876.

WM. H. GAINES,
Per RECTOR & DAVIES, *Attorneys.*

Endorsed: State of Arkansas, county of Garland. I have this 8th day of February, 1876, duly served the within by leaving a copy of the same with each of the within-named persons. Fees: Service, $1.50; mileage, .20; return, .25. D. T. Parker, constable, by C. G. B., D. C.

244 In the Garland Circuit Court, to the May Term, 1876.

WM. H. GAINES, Plaintiff,
vs.
HENRY COHN and CHARLOTTE COHN, Defendants. } Complaint at Law.

William H. Gaines, the p-aintiff in this suit, complaint of Henry Cohn and Charlotte Cohn, his wife, defendants in this suit, of a plea whereof they unlawfully detain the land and premises of the plaintiff; for that the said parties heretofore, to wit, on the 20th day of May, A. D. 1875, was in the peac-able possession of the following land and premises, to wit: That certain tract or parcel of land beginning at the south side of the alley nine feet and four inches south of the Caver building, on the east side of the street, in the town of Hot Springs, running thence south along said street fifty feet to the "Gillis house;" thence east at right angles with the street eighty-five feet to the center of the Hot Springs creek; thence north parallel with the first line fifty feet; thence west parallel with the second line eighty-five feet to the place of beginning, embracing a lot fronting fifty feet on the street and running back eighty-five feet to the center of the said Hot Springs creek, embracing the ground occupied by the old "Bush house," in the town of Hot Springs, county of Garland, State of Arkansas; and the plaintiff, so being possessed of said lot or parcel of land and premises on the day and year aforesaid, leased the same by a written lease (a copy of which is attached hereto, marked "A," and made part hereof) to one R. H. Cohn for the period of twelve months from the first day of June of said year of A. D. 1875, with the privilege of renewing from year to year, at the election of the lessee, R. H. Cohn, until the title to the Hot Springs quarter section of land is settled, at five hundred dollars per annum, to be paid in monthly installments.

And the plaintiff says that the said R. H. Cohn, on the 14th day of August, A. D. 1875 (with the knowledge and consent
245 of said plaintiff), made a written assignment (and said lease attached hereto, marked "A") of his unexpired term in said lease to Charlotte Cohn, wife of Henry Cohn, the defendant herein; and plaintiff says said defendants, Henry Cohn and Charlotte, his wife, entered upon, occupied, took, and held possession of said lot or parcel of land under said written cease and paid the plaintiff a portion of the rent money as it became due under and according to the terms of said written lease; and plaintiff says, afterwards, to wit, on or about the — day of ——, A. D. 187–, said defendants, Henry Cohn and Charlotte Cohn, his wife, refused to pay him any more rent on account of said land and set him at defiance, and that said defendants have renounced the relationship — and tenant and do now

renounce the same, and have continued do hold and do now hold said lor or parcel of land adversely to said plaintiff; and plaintiff says that the term and estate of said defendants in said lot or parcel of land has expired, and that they have forfeited all their right and interest in and to said lot or parcel of land and premises under said lease by reason of their bad, faithless conduct; and plaintiff says that he is lawfully entitled to the possession of said lor or parcel of land, and that said defendants, Henry Cohn and Charlotte, his wife, unlawfully detains the same after lawful demand in writing, made and served on said defendants for the restitution of the lot or parcel of land and premises aforesaid, for his costs in this behalf expended, and one thousand and fifty dollars damages.

RECTOR & DAVIES,
Attorneys for Plaintiff.

STATE OF ARKANSAS, }
Garland County. }

Wm. H. Gaines says that he believes that the statements in the for-going complaint are true.

WM. H. GAINES.

Sworn to and subscribed before me this 12th day of February, A. D. 1876.

[L. S.] A. W. B. REED, *Clerk.*

246 STATE OF ARKANSAS, }
Garland County. }

Wm. H. Gaines, the plaintiff in the above case, states on oath that he is lawfully entitled to the possession of the land and premises mentioned in the above complaint, to wit: Beginning at the routh side of the alley nine feet and four *feet* south of the Caver building, on the east side of the street, in the town of Hot Springs, running thence south along the street fifty feet to the Gillis house; thence east at right angles with the street eighty-five feet to the center of the Hot Springs creek; thence north parallel with the first line fifty feet; thence west parallel with the second line eighty-five feet to the place of beginning, embracing a lot facing fifty feet on the street and running back eighty-five feet to the center of the said Hot Springs creek and embracing the ground occupied by the old Bush house, in the town of Hot Springs, Garland county, State of Arkansas, and that Henry Cohn and Charlotte, his wife, defendants herein, unlawfully detain the same after having had lawful demand made upon them to deliver the same to the possession of the said plaintiff, Wm. H. Gaines.

WM. H. GAINES.

Sworn to and subscribed before me this 12th day of February, A. D. 1876.

[SEAL.] A. W. B. REED, *Clerk.*

Endorsed: Filed this 12th day of February, A. D. 1876. A. W. B. Reed, clerk, by Z. Beldin, D. C.

STATE OF ARKANSAS, } ss:
County of Garland, }

In Garland Circuit Court.

State of Arkansas to the sheriff of Garland county:

Whereas Wm. H. Gaines has filed in the office of the clerk
247 of the circuit court for Garland county, Arkansas, his complaint in writing, signed by himself and attorney, stating that he is entitled to the possession of that certain tract or parcel of land as follows, to wit: Beginning at the south side of the alley nine feet and four inches south of the Caver building, on the east side of the street, in the town of Hot Springs, running thence along the street fifty feet, to the Gillis house; thence east at right angles with the street eighty-five feet, to the center of the Hot Springs creek; thence north parallel with the first line fifty feet; thence west parallel with the second line eighty-five feet, to the place of beginning, embracing a lot fronting fifty feet on the street and running back eighty-five feet, to the center of the Hot Springs creek, and embracing the ground formerly occupied by the old Bush house, in the town of Hot Springs, Garland county, State of Arkansas;

And whereas the said plaintiff, Wm. H. Gaines, has also filed his affidavit attached to said complaint in the clerk's office aforesaid, stating that he is entitled to the possession of the hereinabove-described lot or parcel of land, described in said complaint, and that the defendants, Henry Cohn and Charlotte, his wife, unlawfully detain the same after lawful demand in writing has been made therefor, you are hereby commanded (if the plaintiff Wm. H. Gaines gives bond according to law) to deliver the possession of said lot or parcel of land and buildings thereon to the said Wm. H. Gaines forthwith and without delay. However, should the defendants, Henry Cohn and Charlotte Cohn, give bond according to law in ten days you will in that case take such bond and leave the possession of the land and premises with said defendants. You are further commanded to summon Henry Cohn and Charlotte Cohn to appear at the Garland circuit court on the first day of its next May term, A. D. 1876, to answer the plaintiff in the premises, and to make due return of this writ.

In witness whereof I have hereunto set my hand and affixed my official seal this 12th day of February, A. D. 1876.

[SEAL.] A. W. B. REED, *Clerk*,
By Z. BELDIN, *D. C.*

248 Endorsed.

STATE OF ARKANSAS, } ss:
County of Garland, }

I have this 16th day of February, A. D. 1876, duly served the within by delivering a copy of the same to Henry Cohn and Charlotte Cohn, the within-named parties; and I further certify that on the 21st day of February the defendants gave bond to retain posses-

sion, with Johnathan Brantley, H. Moscowitz, F. Schicker, and P. H. Burroughs, all residents of Garland county, Arkansas, whereupon I left the property in the possession of the defendants, and do herewith file the said bond, together with the bonds of the plaintiff.

Fees: Service, $2; milecage, .20; bond, .50; return, .25.

JOHN J. SUMPTER, *Sheriff.*

Filed May 8th, 1876.

A. W. B. REED, *Clerk.*

The State of Arkansas to the sheriff of Garland county:

You are commanded to summon Henry Cohn and Charlotte Cohn to answer, on the first day of the next May term of the Garland circuit court, a complaint filed against them in said court by Wm. H. Gaines, and warn them that upon their failure to answer the complaint will be taken for confessed, and you will make due return of the summons on the first day of the next May term of said court.

Witness my hand and the seal of said court this 12th day of February, 1876.

[SEAL.]

A. W. B. REED, *Clerk,*
By Z. BELDIN, *D. C.*

Endorsed.

STATE OF ARKANSAS, }
County of Garland. }

I have this 16th day of February, A. D. 1876, duly served the within by delivering a copy of the same to the within-named H. and C. Cohn as therein commanded.

Fees: Service, $1; mileage, .20; return, .25.

249 JOHN J. SUMPTER, *Sheriff.*

Returned and filed this 8th day of May, A. D. 1876.

A. W. B. REED, *Clerk.*

In the Garland Circuit Court.

WM. H. GAINES, Plaintiff,
vs.
HENRY COHN and CHARLOTTE COHN, Def'ts. } Appraisement.

The undersigned, having been appointed and duly sworn as appraisers by the sheriff of Garland county, do appraise the following-described lot or parcel of land and premises, to wit: Beginning at the south side of the alley nine feet and four inches south of the Caver building, on the east side of the steeet, in the town of Hot Springs, running thence south along said street fifty feet to the "Gillis house;" thence east at right angles with the street eighty-five feet to the center of the Hot Springs creek; thence north parallel with the first line fifty feet; thence west parallel with the second line eighty-five feet to the place of beginning, embracing a lot

fronting fifty feet on the street and running back eighty-five feet to the center of the Hot Springs creek, in the town of Hot Springs, Garland county, State of Arkansas, at the sum of twenty-two hundred dollars.

E. M. DONALD.
J. W. KIMBEL.

STATE OF ARKANSAS, }
County of Garland. }

I, John J. Sumpter, sheriff of Garland county, State of Arkansas, do hereby certify that the for-going J. W. Kimbel and E. M. McDonald are appointed and duly sworn to appraise the above-described lot or parcel of land and premises.

JOHN J. SUMPTER, *Sheriff.*

250 Endorsed.

STATE OF ARKANSAS, }
County of Garland. }

I have, on this 16th day of February, A. D. 1876, duly served the within by summoning J. W. Kimbail and E. M. McDonald, who, after being duly sworn according to law, valued the within-described property at the sum of twenty-two hundred dollars ($2,200).

Service, $1; mileage, .10; return, .25.

JOTN J. SUMPTER, *Sheriff.*

Filed May 8th, 1876.
A. W. B. REED, *Clerk.*

STATE OF ARKANSAS, }
County of Garland, } *ss:*

In Garland Circuit Court.

Know all men by these presents that we, Wm. H. Gaines, as principle, and R. G. Davies and S. H. Stitt, as securities, are held and firmly bound unto John J. Sumpter, sheriff of Garland county, Arkansas, in the sum of forty-four hundred dollars, being double the amount of the value of the hereinafter-described lot or parcel of land; to the payment of which we bind ourselves, our heirs and assigns, firmly by these presents, conditioned: Whereas the said Wm. H. Gaines is about to sue out of the circuit court of Garland county a writ of unlawful detainer against Henry Cohn and Charlotte Cohn for the following-described lot or parcel of land, to wit: Beginning at the south side of the alley nine feet and four inches south of the Caver building, on the east side of the street, in the town of Hot Springs, running thence south along said street fifty feet to the "Gillis house;" thence east at right angles eighty-five feet to the center of the Hot Springs creek; thence north parallel with the first line fifty feet; thence west parallel with the second line eighty-five feet to the place of beginning, embracing a
251 lot fronting fifty feet on the street and running back eighty-five feet to the center of the Hot Springs creek, in the town

of Hot Springs, Garland county, State of Arkansas: Now, if the said Wm. H. Gaines will prosecute his suit to effect and without delay, and, if defendants recover judgment against him in this action, he will restore the possession of the property, buildings, &c., to the complainant mentioned and hereinabove described if restitution thereof be adjudged, and will pay the defendants all such sums of money as may be recovered against him by the defendants in this action for any cause whatsoever, then this bond to be null and void.

WM. H. GAINES.
R. G. DAVIES.
S. H. STITT.

Approved May 16th, 1876.
JOHN J. SUMPTER, *Sheriff.*

Endorsed: Filed May 8th, 1876. A. W. B. Reed, clerk.

Garland Circuit Court.

WM. H. GAINES, Plaintiff,
against
HENRY COHN and CHARLOTTE, His Wife, Defendants. } Demurrer.

Comes the defendants, by attorneys, and demurs to the complaint of plaintiffs herein, because—

1st. It does not state facts sufficient to constitute a cause of action.

MURPHY & WOODS,
For Defendants.

Endorsed: Filed May 12th, 1876. A. W. B. Reed, clerk.

252 In the Garland Circuit Court, before Ho. Jabez M. Smith, Judge. May Term, 1876.

WM. H. GAINES, Pl'ff,
vs.
H. COHN *et al.*, Def'ts. } No. 189. Unlawful Detainer.

Come the parties, by their attorneys, and said defendants file their demurrer to the complaint of the plaintiff herein.

STATE OF ARKANSAS,
County of Garland, } *ss:*

I, Z. Beldin, clerk of the Garland circuit court, do hereby certify that the annexed and for-going 19 pages contain a true and correct copy or transcript of the record and proceedings in the case of Wm. H. Gaines *vs.* Henry Cohn *et al.* in the Garland circuit court, as the same now appears of record in my office.

In witness whereof I have hereunto set my hand and official seal on this 2nd day of February, 1878.

[Seal of Circuit Court, Garland Co., Ark.]

Z. BELDIN, *Clerk.*

(Endorsed:) No. 188. Given in testimony of claim of Charlotte Cohn, No. 188, before the Hot Springs Commission. A. H. Cragin, ch.

This agreement of lease, made this 1st day of March, 1875, between Wm. H. Gaines, as lessor, and R. H. Cohn and A. J. Fife, as lessees, witnesseth: That the lessor, Gaines, has leased and demised to
253 the lessees, Cohn and Fife, a certain lot or parcel of land lying and being situated in the county of Garland, in the State of Arkansas, and described as follows, to wit: Beginning at the south side of the alley nine feet four inches south of the Caver building, on the east side of the street, in the town of Hot Springs, run- thence south along the east side of the street fifty feet to the Gillis house; thence east at right angles with the street eighty-five feet to the centre of Hot Springs creek; thence north parallel with the second line eighty-five feet to the place of beginning, embracing the land occupied by the old log building formerly known as the "Bush house;" to have and to hold the same unto the said R. H. Cohn and A. J. Fife for a term of one year from the first day of March, 1875, to be renewed at the option of the lessees from year to year until the title to the Hot Springs quarter section is settled, for the annual rent of five hundred dollars, to be paid by the lessees to the lessor or his legal representatives as follows, to wit: The lessees covenant and agree to pay to the said Gaines or his legal representatives the said rent of five hundred dollars per annum in installments of forty-one $\frac{66}{100}$ dollars cash on the first day of each and every month during the continuance hereof, and to surrender peac-able possession of the premises to said Gaines or his legal representatives at the expiration hereof; and it is further agreed that the lessees may remove all buildings which they may have erected or may own standing on said lot at any time within thirty days after the expiration hereof: Provided, however, that the lessor shall have a lien on all such buildings to secure the rent herein provided for, and no such buildings shall be removed by the lessees while any part of said rent shall remain due and unpaid.

And it is further agreed that if the lessees shall make default and shall be in arrears with said rent or any part thereof for (10) ten days at any one time it shall work a forfeiture of this lease, and the lessor may at his own election enter upon the premises, eject the lessees therefrom, and repossess himself of the same without
254 notice or other legal process. This lease shall not be assigned nor the premises underlet without the written consent of the lessor being first endorsed hereon.

Witness the hands and seals of the parties hereto this 1st day of March, 1875.

WM. H. GAINES, [SEAL.]
Per R. G. DAVIES.
R. H. COHN. [SEAL.]
A. J. FIFE. [SEAL.]

STATE OF ARKANSAS, } ss:
County of Garland, }

In consideration of the sum of $50 the within and for-going lease is surrendered to the lessor and cancelled by the lessees, the lessor consenting thereto.

This 20th day of May, 1875.

A. J. FIFE. [SEAL.]
R. H. COHN. [SEAL.]
WM. H. GAINES. [SEAL.]

(Endorsed:) Lease from Wm. H. Gaines to A. J. Fife and Cohn. $41.66 per first of each month. No. 188. Given in testimony in claim of Charlotte Cohn, No. 188, before the Hot Springs Commission. A. H. Cragin, ch.

Office of H. Moscowitz, dealer in staple and fancy groceries and provisions, wines, liquors, tobacco, and cigars.

HOT SPRINGS, ARK., *April 15th*, 1875.

Know all men by these presents that I, William H. Gaines, have this day bargained and sold and by these presents do sell
255 unto A. J. Fife — I. H. Cohn that certain lot or parcel of buildings situated south of Cavers houre, north of the Gillis house, known as the Old Valley house, in Hot Springs, Garland county, Arkansas, for the sum of $25 cash in hand and $25 in carpenter's work.

WM. H. GAINES,
Per R. G. DAVIES, *Attorney.*

Witness-:
F. SCHICKER.
W. P. MANGUM.

Received on the above $25 cash, $20 cash, and due bill for $5 in full for the above-mentioned building.

WM. H. GAINES,
Per R. G. DAVIES, *Attorney.*

(Endorsed:) 188. Given in testimony in claim of Charlotte Cohn, No. 188, before the Hot Springs Commission. A. H. Cragin, ch.

Know all men by these presents that I, A. J. Fife, for and in consideration of the sum of $150 to me in hand paid by R. H. Cohn, have sold, and do by these presents sell, grant, and convey, unto the said R. H. Cohn and unto her heirs and assigns forever all my right, title, and interest in the house heretofore known as the "Burh house," situate on land belonging to Wm. H. Gaines, on the east side of the street, in the town of Hot Springs, in the county of Garland, in the State of Arkansas, together with all the appurtenances, stands, attachments, privileges, and immunities thereto belonging.

Witness my hand and seal this 20th day of May, 1875.

A. J. FIFE. [SEAL.]

Witnessed by—
A. CURL.

(Endorsed:) No. 188. A. J. Fife to R. H. Cohn. Bill of sale for house, dated May 20th, 1875. Given in testimony in claim of Charlotte Cohn, No. 188, before the Hot Springs Commission. A. H. Cragin, ch.

256 This agreement of lease, made this 20th day of May, 1875, between Wm. H. Gaines, as lessor, and R. H. Cohn, as lessee, witnesseth: That the lessor, Gaines, has leased and demised to the lessee, R. H. Cohn, a certain lot or parcel of land lying and being situate in the town of Hot Springs, in the county of Garland, in the State of Arkansas, and described and bounded as follows, to wit: Beginning at the south side of the alley nine feet and four inches south of the Caver building, on the east side of the street, in the said town of Hot Springs, run-thence south along the street fifty feet to the Gillis house; thence east at right angles with the street eighty-five feet to the center of Hot Springs creek; thence north parallel with the first line fifty feet; thence west parallel with the second line eighty-five feet to the place of beginning, embracing a lot fronting fifty feet on the street and running back eighty-five feet to the center of said Hot Springs creek and embracing the ground occupied by the old "Bush house;" to have and to hold the same unto the said R. H. Cohn from the 1st day of June, 1875, to the 1st day of June, 1876, with the privilege of renewing from year to year, at the election of the lessee, R. H. Cohn, until the title to the Hot Springs quarter section of land is settled, the lessee, R. H. Cohn, yielding and paying to the said Gaines as a rent therefor the sum of five hundred dollars per annum, to be paid in installments of forty-one and $\frac{66}{100}$ dollars each, monthly, in advance, on the 1st day of each and every month during the continuance hereof; and the said lessee covenants to deliver peac-able possession of said demised property to the lessor, Gaines, or *his* legal representatives at the expiration hereof; and it is further agree*d* that the lessee may remove any and all buildings situate on said lot belonging to him from said lot at any time within thirty days after the ex*f*iration hereof: Provided, however, that the lessor shall have a lien on all such buildings to secure the payment of the rent hereinabove provided for; and if the *lessor* shall make default and shall be in arrears with said rent or
257 any part thereof for ten days at any one time it shall work a forfeiture of this lease, and the lessor may, at his own election, enter upon the premises, eject the *lessor* therefrom, and repossess himself of the same without notice or other legal process. This lease shall not be assigned nor the premises underlet without the written consent of the lessor being first indorsed hereon.

Witness the hands and seals of the parties hereto this 20th day of May, 1875.

WM. H. GAINES. [SEAL.]
R. H. COHN, [SEAL.]
By HENRY COHN, *Attorney*.

Witness:

——, ——.

(Endorsed:) Wm. H. Gaines to Cohn. Lease. Date, 1875. Given in testimony in claim of Charlotte Cohn, No. 188, before the Hot Springs Commission. A. H. Cragin, ch.

STATE OF ARKANSAS, }
County of Garland, } ss:

I, R. H. Cohn, for and in consideration of the sum of — dollarr to me in hand paid by Charlotte Cohn, do hereby transfer and assign the within and for-going lease unto the s-id Charlotte Cohn, wife of Henry Cohn; to have and hold the same unto her during the remainder of the term mentioned therein, the said Charlotte Cohn and her husband, Henry Cohn, assuming all and singular the obligations of the lessee; and this lease is transferred with the express understanding that the lien of the landlord, Wm. H. Gaines, on all buildings situate on said lot therein described shall remain and be as binding upon the assignee and the buildings situate upon said lot as upon the original lessee; and the said Charlotte Cohn and her husband, Henry Cohn, covenant and agree to perform all
258 and singular the covenants of the lessee as expressed in said lease, and to hold the same unto the conditions and penalties therein set forth and expressed, and the lessor, Gaines, consents to said assignment and transfer upon the aforesaid conditions.

Witness our hands and seals this 14th day of August, 1875.

R. H. CORN. [SEAL.]
CHARLOTTE COHN. [SEAL.]
HENRY COHN. [SEAL.]
WM. H. GAINES. [SEAL.]

$65. HOT SPRINGS, ARK., *July 31st*, 1876.

Received of Mrs. Charlotte Cohn sixty-five dollars in full payment of rent of premises upon the Hot Springs reservation for the month ending June 30th, 1876.

No. —. A. O. MORGAN, *Receiver.*

Endorsed: No. 188.

$35. HOT SPRINGS, ARK., *Oct. 3rd*, 1876.

Received of Mrs. C. Cohn thirty-five dollars on account of rent of premises upon the Hot Springs reservation for the month of August, 1876.

No. —. A. O. MORGAN, *Receiver.*

Endorsed: No. 188.

$65. HOT SPRINGS, ARK., *Aug. 29th*, 1876.

Received of Mrs. C. Cohn sixty-five dollars on account of rent of premises upon the Hot Springs reservation for the month ending July 31st.

No. —. A. O. MORGAN, *Receiver.*

Endorsed: No. 188.

259 $30. HOT SPRINGS, ARK., *Oct. 24th*, 1876.

Received of Mrs. C. Cohn thirty dollars in full payment of rent of premises upon the Hot Springs reservation for the mo-th of August, 1876.

No. —. A. O. MORGAN, *U. S. Receiver.*

Endorsed: No. 188. Given in testimony in claim of Chas. Cohn, No. 188, before the Hot Springs Commission. A. H. Cragin, ch.

In the Matter of the Claim of CHARLOTTE COHN, No. 188, Heretofore Consolidated with Claim No. 784, of Wm. H. Gaines *et al.*, and Sundry Other Claims.

SATURDAY, *February 16th*, 1878.

Forenoon Session.

HENRY COHN sworn and examined.

Questioned by W. P. WALSH, attorney for claimant:

1st Q. State your name, age, and residence.

A. Henry Cohn; age, thirty-four; Hot Springs.

2nd Q. State whether you know the premises described in the plat which is filed with the petition of Charlotte Cohn.

A. Yes.

3rd Q. How long have you known them?

A. Since 1875.

4th Q. What was the condition of the premises when you first saw them?

A. The land was occupied by some old log houses. They were removed by my orders. I had the right from Maj. Gaines by bill of sale. I purchased all the buildings and premises from Major Gaines and paid him $50 for them—Mr. Fife and myself.

5th Q. Describe the log cabins that were there when you purchased.

260 A. They were where my present building is now. They were worth ten or fifteen dollars for kindlings.

6th Q. How much of the space now occupied by the Cohn house did the cabins cover?

A. About the same ground; pretty nearly all.

7th Q. What did you do with them after you bought them?

A. In 1875 I was merchandising in the valley and a man named Fife was clerking for me, and he came to me and said a man wanted to sell him the Old Valley house or Bush house, and he asked me if I would furnish half the money to buy the old building. I told him yes; I would do that; that the old logs were worth something, and so we bought the logs together for 50—A. J. Fife and myself. In the first place, Fife lived in there three or four months; he had it rented from Major Gaines before we bought it. We occupied it a short time and had a few rooms rented out for a short time after we purchased it, and then A. J. Fife left Hot Springs and asked me if

I would not buy out his interest, and so I bought his interest for $159, and I have his relinquishment. Here it is (paper produced). After I purchased from Fife I had some carpenters tear the building down and remove them to the Sumpter lot, right across the street, fronting my building, in July, 1875. They I built, first, the little building now occupied by the little restaurant, one story high, and afterwards built what is now known as the Cohn house. I furnished all the material that is in the house and paid for it. As soon as the roof was on I moved in and have been there ever since—since the latter part of August or the first of September.

8th Q. How are you related to the petitioner?

A. I am her husband.

9th Q. How did she get possession of this property?

A. She bought the interest of J. H. Cohn, a sister of mine. J. H. Cohn and Fife bought this old building and Fife sold his in-
261 terest to J. H. Cohn, and then it was transferred from J. H. Cohn to my wife, the petitioner.

10th Q. What were the buildings constructed by you worth on the 24th of April, 1876?

A. The buildings were worth $4,000. I only gave them it for $3,500.

11th Q. Describe the buildings.

A. It is forty feet front and forty-six feet deep, to the center of the creek; three stories high, sixteen rooms upstairs, and down-stairs two large store-rooms. We have a kitchen in the middle of the creek 12 feet by 24.

12th Q. Are there any other buildings in the rear of the house?

A. No, sir. There is one building, occupied by Mr. Graham, south of the hotel—between the hotel and the building—that Mr. Towle claims now. That is 46 feet by 12—a one-story building.

13th Q. All the land you have been describing is situated within the land described in your petition?

A. Yes, sir.

14th Q. And constructed by you?

A. Yes.

15th Q. And all the materials were purchased by you?

A. Yes.

16th Q. And they were there on the 24th of April, 1876?

A. Yes, sir.

17th Q. Do the petitioner and her husband live there now?

A. Yes, sir; they have lived there since August, 1875.

18th Q. Do you make this claim in your own right?

A. No, sir; in my wife's right.

19th Q. Does the $3,500 cover the whole thing or only the hotel?

A. It is for the hotel.

262 20th Q. Did not Major Gaines get possession of that property since you constructed it?

A. In the first place, I made him an offer. In the spring of 1876 I wanted to rent it to old man Towle, and one morning I had one of the store-rooms, where the saloon is now, cleaned out, because a party wanted to rent it. I had the key in my pocket. Major Gaines

came in there with a bundle of oats under his arm and cow peas, and took a seat there. When I came into the room where he was I said to him, "Good morning, Major." Said he, "Good morning. I have got possession of my building." Said I, "You don't claim this as your building, do you?" He said, "Yes; I have got possession of it, and I claim it as mine." Said I, "Major, you had better get out of here or I will make it hot for you." Said he, "All right." I went upstairs. My wife was a little alarmed and nervous, and I told her, Never mind; he had just came around there bulldosing a little. When I came down-stairs again Major Gaines had two negroes there—a man by the name of Bill Miller, who was sent to the penttentiary for stealing by the Garland circuit court and is there now, and a man by the name of Golden, who is generally a witness for Major Gaines in all his lawsuits, &c. That afternoon I went before a justice of the peace and had a warrant made out against Major Gaines for trespassing. By about nine or ten o'clock that night about fifty persons got together down there. There was what they called a protection association here then, that was started to protect each other in their claims. They wanted to go in and put all three of them out by force, but I told them, "Gentlemen, do not do it; I had better go by law." So about ten o'clock I handed the papers over to a constable, and he ordered the three parties out of the house, and I went in and closed up the store. After they were arrested I took possession and turned the Major's cow peas and bundle of oats over to old man Towle.

Cross-*ek*amined by Mr. BENJAMIN in behalf of Gaines *et al.*:

21st Q. Did they serve you with a writ of unlawful detainer afterwards?

263 A. Yes; and I gave bond and kept it.

22nd Q. That suit is still pending?

A Yes.

23rd Q. You rented the ground from Gaines?

A. Yes, sir.

24th Q. How much rent is still due from you to him?

A. At the time he served the writ there was a hundred dollars and something -ver.

25th Q. Is it not $300 and upwards?

A. No, sir.

MARX HORN sworn and examined *sworn and examined.*

Questions by W. P. WALSH in behalf of Chas. Cohn:

1st Q. State your name, age, and residence.

A. Marx Horn; age, forty-five; Hot Springs.

2nd Q. How long have you resided in Hot Springs?

A. Four and a half years.

3rd Q. Do you know the premises described by Mr. Cohn?

A. Yes; I have known them three years. I worked on the building in the summer of 1875. I was employed by Henry Cohn.

4th Q. What was the condition of the ground at that time?

A. There were some old houses on it. They moved them away and tore them down—Mr. Henry Cohn, I suppose.

5th Q. You constructed this new building in their stead?

A. Yes.

264 6th Q. Describe the building you constructed there.

A. I put the whole front in myself—the same building that stands there now.

7th Q. Was that building there on the 24th of April, 1876?

A. Yes.

8th Q. What is the value of the Cohn house and the house occupied — Graham?

A. About $3,500. One is three stories high and the other one story.

Cross-examined by Mr. BENJAMIN in behalf of Gaines *et al.*:

9th Q. When did you commence that improvement?

A. In the hot weather of 1875.

10th Q. They commenced work before you did?

A. Yes; I worked there during July and August.

11th Q. In June?

A. No, sir.

12th Q. How much work had they done before you commenced?

A. They had raised and had been at work at it for some time.

Re-examined by Mr. WALSH:

13th Q. You mean the Cohn house?

A. Yes, sir.

14th Q. Whom did you dind exercising control over the construction of that building when you came there?

A. Mr. Cohn hired me and paid me.

15th Q. Was the little house occupied by Graham completed at that time?

A. That stood on the other corner then, and they moved it. It was built before the Cohn house; that house was built early in the summer or in the spring.

265 ALPHONSO CURL sworn and examined.

Questioned by Mr. WALSH in behalf of C. Cohn:

1st Q. State your name, age, and residence.

A. Alphonso Curl; age, forty; Hot Springs.

2nd Q. Look at this deed, being a deed made by Fife to J. H. Cohn and dated May 20th, 1875, and state whether you recognize it. (Said paper was handed to witness.)

A. Yes, sir; it was executed in my presence.

ROBERT G. DAVIES sworn and examined.

Questioned by Mr. WALSH in behalf of C. Cohn:

1st Q. State your name, age, and residence.

A. Robert G. Davies; age, twenty-six; Hot Springs.

2nd Q. How are you related to Major Gaines?

A. He is my uncle.

3rd Q. State whether you were acting as his agent here in April, 1875.

A. Yes.

4th Q. State whether as his agent and attorney and by his consent you made a sale of some cabins situate where the Cohn house is now.

A. I will state that as well as I can recollect Mr. Fife wanted to lease this property, and there were some old buildings on it. Major Gaines was absent at the time. They wanted me to sell them the old buildings. I had a consultation with the Major's wife about it and came to the conclusion to sell them the buildings, and I told them so, but did not make the sale. I would not do anything till I had communicated with the Major about it, and I afterwards either wrote to him about it or saw him when he came back, and
266 then made the bill of sale. He was in Washington at the time. I made a bill of sale to A. J. Fife and J. H. Cohn. The building sold was described as the building situated south of Mr. Caver's house, known as the Old Valley house.

5th Q. Is this the instrument by which you made the conveyance?

A. Yes; that is my signature as the attorney of Major Gaines.

Claimant Cohn offered the said paper in evidence, being bill of sale, dated April 15th, 1875, from Wm. H. Gaines, by R. G. Davies, attorney, to A. J. Fife and J. H. Cohn, dated April 15th, 1875, together with the receipt of Wm. H. Gaines thereto appended, and the same is herewith.

6th Q. Did you have authority from Major Gaines to make this sale?

A. Yes; I had written power to act as his attorney. I transacted business for him generally at that time and till the first of July, 1876.

7th Q. At the time you made the sale was Mr. Fife in possession of the premises?

A. I think he was. I think it was after the lease was made.

Cross-examined by Mr. BENJAMIN in behalf of Gaines *et al.*:

8th Q. Look at these leases and transfers and state whether they are or not the original documents.

A. This lease appears to be made on the 20th of May, 1875. It is in the handwriting of Mr. Curl. The one made by me is dated on the 1st of March, 1875. I do not know anything about these transfers. (The papers referred to were exhibited to witness, being lease from Gaines to Fife and Cohn, dated in March, 1875, and from Gaines to Cohn, dated May 20th, 1875.)

9th Q. Had that property been rented before the sale?

A. At the time Fife and Cohn leased it there was some misunderstanding about the building, and I do not think the lease conveys the building at all.

267 10th Q. Did that lease give them the right to build and remove them?

A. I do not recollect.

11th Q. State if they did not make application to you to purchase these old houses in order to tear them down, so that there could be no question, and then put up new houses.

A. That is what they said they proposed to do. They did not take them down and put up others.

Re-examined by Mr. WALSH:

12th Q. Can you assign any other reason—for instance, that the buildings were rotting, and that they were worthless, and therefore they removed them?

A. I do not know any other reason than that they were old buildings.

13th Q. You sold those buildings for $50. Did you get the full value of them?

A. I do not think I did. I think they were worth $100 more than that and probably more. There were three rooms in all.

14th Q. Was there any of this material entered into the construction of the Cohn house?

A. I think not.

15th Q. Who paid you the rents for that ground?

A. I think Mr. Cohn did. I am not certain. I know he paid me $25. Probably Mr. Fife gave me $20 and gave me a due bill for the balance. It provides that $25 shall be paid in rent, and you will find a receipt at the bottom of it for $20 and a due bill for the balance.

HENRY COHN recalled.

Questions by Mr. WALSH:

1st Q. Did you lease this property from the receiver?

268 A. Yes.

2nd Q. Are these the receipts he gave you for rent you paid?

A. Yes.

Claimant offered in evidence the several receipts signed by A. O. Morgan, receiver, for the United States, and the same are herewith.

Cross-examined by Mr. BENJAMIN:

3rd Q. State whether this is the lease you took from Major Gaines.

A. That is my signature, and I believe it to be my wife's.

Counsel for Wm. H. Gaines *et al.* under claim No. 784 offered the said lease in evidence, being a lease by Wm. H. Gaines to A. J. Fife and J. H. Cohn, dated March 1st, 1875; also lease from Gaines to Cohn, dated May 20th, 1875; also transcript of pleadings and proceedings now pending in the Garland circuit court in the case of Wm. H. Gaines and wife, for unlawful detainer of the premises in question, against Henry Cohn and wife; all of which are herewith.

WILLIAM H. GAINES recalled.

Questions by Mr. BENJAMIN:

1st Q. State the facts about this sale.

A. It was just like the sale of other cabins that were somewhat dilapidated. The lumber was more than I consented to the sale for. There was a brick chimney in it and two plank rooms at the upper end of the house. There were two log cabins in front and one very large one in the rear, and on the north end of those cabins there were two or three bed-rooms planked up of the cheapest character.

There was a double brick chimney in the two front ones.
269 They were built and put there by myself, and rented out till they were scarcely tenable. They were moved away by Cohn to give room for the building a few days after the lease was made.

By Com. COBURN:

2nd Q. Were the buildings ever used by Cohn?

A. I do not think they were. I think his partner, Fife, used them, bst not very long, for the use of his family as a residence. I do not think he transacted any business in them. They were rented to Fife.

By Mr. WALSH, representing Charlotte Cohn:

3rd Q. Who built those cabins?

A. I built them before the war.

4th Q. Did you build them on the same ground they were on when you sold to Fife?

A. Yes, sir; I think I built them about 1858.

And further the witness saith not.

THURSDAY, *October 9th*, 1879.

In the Claim of CHARLOTTE COHN. No. 188.

At this time comes the petitioner, Charlotte Cohn, and the commissioner- having heard and considered the petition and testimony, as also the testimony in claim No. 784, William H. Gaines and Maria Gaines, do say and find that the claim of the petitioner accrued prior to the 24th day of April, A. D. 1876, by reason of the *sue*, occupation, and improvements of the premises *of the premises* described in the petition, and that the petitioner is the owner
270 and entitled to the possession of the improvements made thereon.

And the commission, having had the premises surveyed and having inspected and caused the same to be platted, numbered, and scheduled, and having appraised the same as provided by law, and being sufficiently advised of the premises, do further say and find that the petitioner is entitled to purchase from the United States the following-described land in Hot Springs, to wit: Lot numbered 7,

in block numbered 130, for the sum of ten hundred and forty dollars, that being the appraised value thereof.

It is therefore ordered and adjudged that the said Charlotte Cohn is entitled to purchase said lot numbered 7, in block numbered 130, for said sum of ten hundred and forty dollars, and that a certificate be issued to her for the right to purchase the same, containing 3,370 feet.

UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 9th day of April, anno Domini one thousand eight hundred and eighty-eight, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On April 21st, 1888:

639. *Final Decree.*

Now, on this day, came the plaintiffs, by their solicitors, M. W. Benjamin, R. G. Davies, and U. M. & G. B. Rose, Esqs.; and also came the said defendant, Charlotte Cohn, by John McClure, Esq., her solicitor; and a special master having heretofore filed his report herein, and this cause now coming on for hearing, and the court having the argument of counsel, and being now sufficiently
271 advised as to the further decree to render herein—

It is ordered, adjudged, and decreed that all the exceptions of the defendant to the master's report be, and the same are, overruled; and thereupon the court finds and states the account between the plaintiffs and the defendant as follows:

To amount due said plaintiff for rent, according to the terms of the lease, from date of award to the date of the filing of the bill in this case and interest, thirty-one hundred and thirty-one dollars and eighty-four cents ($3,131.84).

To amount due him since said date and until the filing of the master's report, rental value of the property and interest, nineteen hundred ninety-three dollars and eighty-nine cents ($1,993.89).

To amount of rent to date of the decree, six hundred dollars ($600), amounting in the aggregate to the sum of five thousand seven hundred and twenty-five dollars and seventy-three cents ($5,725.73).

By amount due the defendant for taxes paid and interest, twelve hundred and eighty-one dollars and seventy-three cents ($1,281.73).

By acount of purchase-money paid by him to Government for said lot and interest, five hundred sixty-one dollars and sixty cents ($561.60).

By present value of the improvements, forty-five hundred dollars ($4,500); which said sums amount in the aggregate to sixty-three hundred and fifty-three dollars and forty-three cents ($6,353.43), from which take fifty-seven hundred and twenty-five dollars and

seventy-three cents ($5,725.73) as above; leaves the sum of five hundred and twenty-eight dollars and seventy cents ($528.70), which the court finds to be the balance now due the defendant, which if not paid in ninety days, either upon any *bona fide* mortgage upon said property or into court, that an order of sale shall be issued to N. W. Cox, as special master, sho shall sell said property at public auction on a credit of six months, with good security, after advertising for twenty days in some newspaper published in Hot Springs,
and out of the proceeds pay off said five hundred and twenty-
272 eight dollars and seventy cents, less costs of suit, and balance pay over to plaintiffs.

It is therefore ordered, adjudged, and decreed that the said defendant have and recover from said plaintiffs said amount of five hundred twenty-eight dollars and seventy cents ($528.70), less all costs of this suit, and that he have execution therefor.

And it is further ordered and decreed that the said plaintiffs are to have and to recover from said defendants the possession of said lot seven (7), in block one hundred and thirty, in city of Hot Springs, and that a writ of possession issue, and serving a copy of this decree shall be the writ.

It is further ordered that N. W. Cox be allowed the sum of one hundred dollars for his services as special master herein, and the defendants pray- an appeal to the supreme court, which is granted; and it is ordered that upon *his* executing and filing a bond, within the time and conditioned as prescribed by law, in the sum of four thousand dollars, and cost bond for two hundred and fifty dollars, with good, approved security, the decree be superseded pending said appeal.

DAVID J. BBEWER,
Circuit Judge.

On May 31st, 1888, as follows:

639. Comes the defendant and files herein her cost bond and also supersedeas bond, which are approved by the court; which bonds are as follows:

UNITED STATES OF AMERICA, }
Eastern District of Arkansas, W. D. }

273 WILLIAM H. GAINES and MARIA GAINES }
vs. } 639.
CHARLOTTE COHN. }

We, Charlotte Cohn, as *principle*, and Henry Cohn, I. M. Swartz, T. B. Buchanan, and D. T. Taylor, as sureties, are held and firmly bound unto William H. Gaines and Maria Gaines, his wife, in the penal sum of four thousand dollars; for the payment of which, well and truly to be made, we bind ourselves, our executors and administrators, firmly by *this* presents.

The condition of this bond is such that whereas said Charlotte Cohn has appealed from the final decision of the circuit court of the

United States for the W. D. of the eastern district of Arkansas, in chancery, in a certain cause, No. 639, lately pending in said court, wherein said William H. Gaines and wife were complainants and Charlotte Cohn was defendant:

Now, if the said Charlotte Cohn shall prosecute her said appeal to effect and if she fail to make her plea good shall answer all damages and costs assessed and to be assessed against her in said court, this bond — be void; otherwise to remain in force.

In testimony whereof we have hereunto set our hands this 30th day of May.

CHARLOTTE COHN. [SEAL.]
H. COHN. [SEAL.]
I. M. SWARTZ. [SEAL.]
T. B. BUCHANAN. [SEAL.]
D. T. TAYLOR. [SEAL.]

H'y Cohn, I. M. Swartz, and D. T. Taylor each states that he is a resident of the State of Arkansas, and that he is worth the sum of one thousand dollars beyond the amount of his debts, liabilities, and exemptions, and has property in said State subject to execution of the value of one thousand dollars; and T. B. Buchanan states that he is worth the sum of four thousand dollars ($4,000) in real estate in the city of Hot Springs, Ark., above all his liabilities.

274 Subscribed and sworn to before me this 30th day of May, 1888.

[SEAL.] JOHN D. WARE,
Notary Public.

(Endorsed:) Approved May 31st, 1888. Henry C. Caldwell, district judge. Filed May 31st, 1888. Ralph L. Goodrich, clerk.

Circuit Court of the United States, Eastern District of Arkansas, W. D.

WILLIAM H. GAINES and MARIA GAINES
vs.
CHARLOTTE COHN. } 639.

Know all men by these presents that we, Charlotte Cohn, Henry Cohn, T. B. Buchanan, and D. T. Taylor, of Hot Springs, Garland county *county*, Arkansas, are held and firmly bound unto Wm. H. Gaines and Maria Gaines in the sum of two hundred and fifty dollars; to the payment of which we bind ourselves and each of us and each of our heirs, executors, and administrators firmly by these presents.

Sealed with our seals and dated this 30th day of May, 1888.

Whereas an appeal has been prayed and granted to the above-named Charlotte Cohn from the decree rendered by this the above-entitled court in the above-entitled suit to the Supreme Court of the United States: therefore, if the said Charlotte Cohn shall prosecute her appeal to a decision and answer all costs if she fails to make